

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
New Heaven Chemicals Iowa, LLC,)	Docket No. CWA-07-2023-0022
)	
Respondent.)	
)	COMPLAINT AND CONSENT
Proceeding under Section 309(g) of the)	AGREEMENT/FINAL ORDER
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, New Heaven Chemicals Iowa, LLC (“Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that Respondent has violated its National Pollutant Discharge Elimination System (“NPDES”) permit, issued under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Enforcement and Compliance Assurance Division (“ECAD”) Director.

5. Respondent is and was at all relevant times a limited liability company under the laws of the State of Iowa and authorized to do business in Iowa.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of an NPDES permit issued pursuant to that section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and the implementing regulations. The EPA retains concurrent enforcement authority with authorized state NPDES programs under Section 309 of the CWA, 33 U.S.C. § 1319.

9. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition listed therein. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory penalties to \$25,847 per day for each day during which the violation continues, not to exceed a maximum of \$323,081 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

EPA’s General Allegations

10. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Respondent is, and at all times relevant to this action was, the owner and operator of a chemical manufacturing facility (“Facility”) located at 1585 380th Street, Manly, Iowa 50456.

12. Respondent’s Facility discharges wastewater to Beaver Creek, a tributary to Shell Rock River, which in turn discharges to Cedar River.

13. Beaver Creek, Shell Rock River and Cedar River are “navigable waters” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
14. Respondent’s wastewater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
15. Respondent’s Facility is a “point source” that “discharges pollutants” into “navigable waters” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.
16. On or about February 15, 2016, the IDNR issued NPDES permit number IA0052535 (hereafter “Permit”) to the Respondent for discharges from the Facility to Beaver Creek subject to compliance with conditions and limitations set forth in the Permit. The IDNR amended the Permit on May 12, 2016, and again on August 1, 2017. The Permit expired on February 14, 2021. The permit has been administratively extended by IDNR.
17. Following a March 2018 inspection identifying permit violations, the EPA issued an Order for Compliance on Consent on December 27, 2018, requiring Respondent to take actions to comply with its permit, Docket No. CWA-07-2019-0035.
18. The EPA and Respondent entered into a Consent Agreement and Final Order resolving penalties for CWA violations on March 26, 2019, Docket No. CWA-07-2018-0300.
19. Respondent did not meet the requirements identified in the EPA issued order on consent CWA-07-2019-0035.
20. Respondent did not meet the requirements identified in the EPA issued consent agreement and final order CWA-07-2018-0300.
21. On July 26-28, 2021, the EPA performed a Compliance Sampling Inspection (“Inspection”) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate the Facility’s compliance with the Permit and the CWA.
22. During the Inspection, the EPA inspector interviewed Respondent’s personnel, reviewed and obtained copies of documents, including Monthly Operating Reports (“MORs”), Noncompliance Notifications submitted to the IDNR, and sampling and analysis records.
23. At the conclusion of the Inspection, the EPA inspector issued a Notice of Potential Violation (“NOPV”) to Respondent identifying potential deficiencies and violations of the Permit noted by the inspector.
24. The EPA mailed a copy of the report of the Inspection to Respondent and the IDNR on or about September 7, 2021.
25. On or about December 2021, Respondent ceased operations at its Facility and has not yet resumed operations.

26. On or about March 8, 2022, EPA issued an Administrative Compliance Order on Consent to address the issues identified during the July 2021 inspection. Respondent is in compliance with the terms of the Order.

EPA's Allegations of Violation

27. The facts stated above are re-alleged and incorporated herein by reference.

28. Based on review of the information and documentation obtained during the July inspection and other relevant information, EPA has determined that Respondent violated the conditions and limitations of its Permit for discharges occurring at Outfall 003.

29. Respondent violated the monthly average, daily maximum, and/or 30-day average effluent concentration and mass limitations set forth in the Permit for discharges from Outfall 003 for 5-day Biological Oxygen Demand ("BOD5"), Chemical Oxygen Demand ("COD"), Iron ("Fe"), and Total Suspended Solids ("TSS") as detailed in Attachment A.

30. Respondent's alleged violation of the terms and conditions of NPDES Permit No. IA0052535 are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

CONSENT AGREEMENT

31. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

32. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

33. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

34. Respondent waives its right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), to appeal any Final Order in this matter under Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B), and consents to the issuance of this Final Order without further adjudication.

35. Respondent and Complainant each agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

36. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

37. Respondent certifies by the signing of this Consent Agreement/Final Order that Respondent is currently in compliance with Administrative Order on Consent, EPA Docket No. CWA-07-2022-0004, to bring Respondent's facility into compliance with NPDES Permit No. IA0052535, Section 402 of the CWA, 33 U.S.C. § 1342, and applicable regulations.

38. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

Penalty Payment

39. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action, and has determined that the appropriate penalty for the violations is \$267,415. However, pursuant to the statutory requirement that EPA consider the economic impact of the penalty on Respondent's business, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

Conditions

40. The Facility is currently not operating. Respondent intends to re-start operations in the future.

41. Respondent shall notify EPA and IDNR no later than sixty (60) days prior to re-starting operations at the Facility.

42. Respondent shall obtain all appropriate Clean Water Act permits prior to re-starting operations at the Facility.

Effect of Settlement and Reservation of Rights

43. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

44. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

45. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

46. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

47. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

48. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

49. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

50. The State of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

51. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

52. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

53. Respondent consents to electronic service of the filed Consent Agreement and Final Order to the following email address: *cfbecker@belinmccormick.com* Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Sara Hertz Wu
Senior Counsel
Office of Regional Counsel

For Respondent, New Heaven Chemicals Iowa, LLC:



Signature

January 27, 2023

Date

RAMESH HARPASS

Name

Chairman

Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: _____ By: _____
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Complaint and Consent Agreement/Final Order, in the matter of New Heaven Chemicals Iowa, LLC, EPA Docket No. CWA-07-2023-0022, was sent this day in the following manner to the following addressees:

Copy via E-mail to Complainant:

Sara Hertz Wu
Senior Attorney
Office of Regional Counsel
hertzwu.sara@epa.gov

Copy by First Class Mail to Respondent:

Paul Katzenberger
Plant Manager
New Heaven Chemicals Iowa, LLC
1585 380th Street
Manly, Iowa 50456

Copy via E-mail to counsel for Respondent:

Charles F. Becker, Attorney
Belin McCormick P.C.
cfbecker@belinmccormick.com

Copy by First Class Mail to the Iowa Department of Environmental Quality:

Jeff Vansteenburgh
IDNR Field Office No. 2
2300 15th Street SW
Mason City, Iowa 50401

Ted Petersen, Supervisor
IDNR Field Office No. 5
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324-4404

Dated this _____ day of _____, _____.

Signed