

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
 Swift Beef Company,) Docket No. CWA-07-2023-0099
)
 Respondent) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
 Proceedings under Section 309(g) of the)
 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 Swift Beef Company (“Swift” or “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 Section 301 and the conditions or limitations of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311, 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 Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence of the Regional Counsel.

5. Respondent Swift Beef Company is and was, at all times relevant, a corporation organized under the laws of the state of Delaware.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, 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 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. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States.”

9. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

10. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency in Nebraska with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations. The EPA retains concurrent enforcement authority with authorized state programs for violations of the CWA.

EPA’s General Allegations

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

12. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the facility located at 555 South Stuhr Road, Grand Island, Nebraska 68801 (the “Facility” or “Site”). Respondent’s Facility is a beef processing facility that was processing approximately 4,500 cattle per day at the time of Complainant’s inspections. The Facility has the capacity to process up to 6,500 cattle per day. The Facility includes a kill plant, processing area, packaging and storage areas, rendering plant, and pretreatment system. Respondent employs approximately 3,600 employees at the Facility, which is run 24 hours a day for 6 days per week.

13. The Facility discharges process wastewater through two outfalls: Outfall 1 discharges to the Grand Island Utilities Ditch; Outfall 2 discharges to the city of Grand Island Wastewater Treatment Facility (“WWTF”).

14. The Grand Island WWTF discharges into the Wood River which is a traditionally navigable water and a “water of the United States.”

15. Prior to being discharged to the Grand Island WWTF, Facility process wastewater is subjected to a “pretreatment system” which consists of: 1) screening building; 2) equalization tank; 3) dissolved air flotation; 4) fines and grit removal; 5) anaerobic lagoons; 6) anoxic basins running in parallel; 7) aeration basins running in parallel, and 8) final clarifier.

16. On December 15, 2014, Respondent received a permit authorizing Respondent to discharge wastewater under the NPDES and the Nebraska Pretreatment Program (“NPP”), effective January 1, 2015, permit no. NE0113891 (“the 2015 NPDES Permit”). The 2015 NPDES Permit expired on December 31, 2019.

17. On December 26, 2019, Respondent received a renewed permit authorizing Respondent to discharge wastewater under NPDES and NPP, effective January 1, 2020, permit no. NE0113891 (“the 2020 NPDES Permit”). The 2020 NPDES Permit will expire December 31, 2024.

18. On April 11 through April 14, 2022, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with its NPDES permit and the CWA. During the EPA’s inspection, EPA personnel toured the Facility, photographed various aspects of the Facility’s pre-treatment system, and reviewed the Facility’s self-monitoring records.

19. At the time of the EPA inspection, average flow of process wastewater pumped to the city of Grand Island WWTF was 3.08 million gallons per day.

20. The EPA inspection report was transmitted to the facility on June 2, 2022.

EPA’s Allegations

Count 1

Failure to Comply with Effluent Limitations

21. The facts stated in Paragraphs 1 through 20 above are re-alleged and incorporated herein by reference.

22. The 2015 and 2020 NPDES Permits outline the limitations, requirements, prohibitions, and conditions for Respondent’s discharge of process wastewater. Within their terms, the Permits impose effluent limitations on Respondent’s wastewater discharges.

23. Specifically, the 2015 NPDES Permit contained the following effluent limitations:

Parameters	Units	Monthly Average Discharge Limit	Daily Maximum Discharge Limit
Biochemical Oxygen Demand	lbs/day	7198	8876
Total Suspended Solids	lbs/day	7198	8876
Ammonia as Nitrogen	lbs/day	864	1065
Total Kjeldahl Nitrogen	lbs/day	1440	1775
Chloride	lbs/day	10000	20000

24. The 2020 NPDES Permit contained the following effluent limitations:

Parameters	Units	Monthly Average Discharge Limit	Daily Maximum Discharge Limit
Biochemical Oxygen Demand	lbs/day	7198	11095
Total Suspended Solids	lbs/day	7198	11095
Ammonia as Nitrogen	lbs/day	864	1331
Total Kjeldahl Nitrogen	lbs/day	1440	2219
Chloride	lbs/day	10000	20000

25. Based on sampling performed and data collected by Respondent, Respondent violated either the daily maximum or monthly average effluent limitations in the following months:

- a. Biochemical Oxygen Demand – June 2020 and February and October 2021;
- b. Chloride – July, August, September, October and November 2019, January 2020, September 2022, January and February 2023;
- c. Ammonia – September and December 2019 and January 2021;
- d. Total Kjeldahl Nitrogen – June 2018, October 2018, December 2019, June, July, August, September 2020, February and October 2021; September 2022, and November 2022;
- e. Total Suspended Solids – June, July, August, September, October and December 2018, January 2019, January, February, March, June, July, August, September, October and November 2020, January, February, May, October, November 2021, June, September 2022, and March 2023.

26. Each failure to comply with the relevant effluent limitations in the 2015 or 2020 NPDES Permits is a violation of Section 301(a), 307(d), and violations of the limitations and conditions of an NPDES permit issued pursuant to Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1317(d) and 1342.

Penalty

27. As alleged in the preceding Counts, and pursuant to Section 309(g)(2)(B) of the

CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$25,847 per day for each day during which the violation continues, up to a maximum of \$323,081.

CONSENT AGREEMENT

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

29. 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.

30. Respondent neither admits nor denies the factual allegations.

31. Respondent waives its rights to contest any issue of fact or law set forth above, and their rights to appeal this Consent Agreement/Final Order.

32. Respondent and Complainant agree to conciliate 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 incurred as a result of this action.

33. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

34. 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

35. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

36. Respondent shall pay the penalty identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2023-0099 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 97908
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

37. Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, electronically to the following:

Regional Hearing Clerk at: R7_Hearing_Clerk_Filings@epa.gov

Sam Bennett at: bennett.sam@epa.gov

38. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

39. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

40. 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 alleged violations identified 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.

41. 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.

42. 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.

43. 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.

44. 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

45. 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.

46. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 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.

47. The state of Nebraska 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).

48. 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.

49. Respondent consents to service of this Consent Agreement/Final Order via electronic mail at the following address: legal@jbssa.com.

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

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

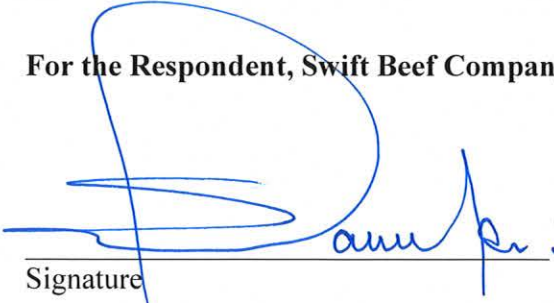
Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Sam Bennett
Office of Regional Counsel

For the Respondent, Swift Beef Company:

 : 11/1/2023

Signature Date

Sergio Sampaio

Name

Executive - Plant Operations

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.

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

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to each Respondent:

Jeremy Fancher
jeremy.fancher@jbssa.com
Swift Beef Company

Copy emailed to Attorney for Complainant:

Sam Bennett
bennett.samuel@epa.gov
U.S. Environmental Protection Agency Region 7

Copy emailed to the Nebraska Department of Environment and Energy:

Phillip Halsted
phillip.halsted@nebraska.gov
Nebraska Department of Environment and Energy

Date