

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA,)

)

)

Plaintiffs,)

)

v.)

CIVIL ACTION NO.

)

THE CITY OF WAKEFIELD, NEBRASKA, and)

M.G. WALDBAUM CO.,)

)

)

Defendants.)

)

COMPLAINT

Plaintiff, the United States of America, by the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against M.G. Waldbaum Co. (“Waldbaum”) and the City of Wakefield, Nebraska (“Wakefield” or “City”) for violations of two federal environmental laws. Specifically, this action is brought pursuant to the Clean Water Act, 33 U.S.C. § 1319(b) and (d); and the Clean Air Act, 42 U.S.C. § 7413(d).

2. The United States seeks declaratory relief, preliminary and permanent injunctive relief, and the assessment of civil penalties against Defendant Wakefield for unlawful discharges from a Publicly Owned Treatment Works (“POTW”), in violation of 33 U.S.C. §§ 1311 and 1342, and against Defendant Waldbaum for causing Wakefield’s violations through pass through and/or interference at the POTW in violation of 33 U.S.C. §§ 1311, 1317, and 1342 and the Pretreatment Standards at 40 C.F.R. Part 403, and also against Defendant Waldbaum for the unauthorized discharge of pollutants to waters of the United States in violation of 33 U.S.C. § 1311(a); improper sludge disposal under its National Pollution Discharge Eliminations System (“NPDES”) permit in violation of 33 U.S.C. § 1342; and violations of the Clean Air Act, 42 U.S.C. § 7412(r), and its implementing regulations, related to anhydrous ammonia in a process at its facility.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; 33 U.S.C. § 1319 (b); and 42 U.S.C. § 7413(b).

4. Notice of the commencement of this action has been given to the State of Nebraska pursuant to 33 U.S.C. § 1319(b) and (f), and 42 U.S.C. § 7413(b).

5. The State of Nebraska intends to join this action as a plaintiff, thereby satisfying the requirements of 33 U.S.C. § 1319(e).

6. Venue lies in the District of Nebraska pursuant to 33 U.S.C. § 1319(b); 33 U.S.C. § 1319(f); 42 U.S.C. § 7413 (b); and 28 U.S.C. §§1391(b) and 1395(a), because it is the judicial district in which the Defendant is doing business and in which the alleged violations occurred.

DEFENDANTS

Waldbaum

7. Defendant Waldbaum is a Nebraska Corporation engaged in egg production and processing with its principal place of business in Wakefield, Nebraska. Waldbaum's main office is located at 105 Main Street, Wakefield Nebraska.

8. Waldbaum is a subsidiary of Michael Foods, Inc. and does business as Michael Foods Egg Products Co.

9. During the past five years and before, Waldbaum has owned and operated several egg laying farms, including Husker Pride Farm ("Husker Pride") and Big Red Farm ("Big Red"), pullet farms and egg processing facilities in or near the City of Wakefield, Nebraska.

10. Waldbaum is a "person" as defined by 33 U.S.C. § 1362(5); and 42 U.S.C. § 7602(e).

11. Waldbaum is an "industrial user" as defined by 40 C.F.R. § 403.3(j).

12. Waldbaum is a "stationary source" as defined by 42 U.S.C. § 7412(r)(2).

Wakefield

13. Defendant Wakefield is a political subdivision of the State and a "municipality" within the meaning of 33 U.S.C. § 1362(4).

14. Wakefield is a "person" as defined by 33 U.S.C. § 1362(5).

15. Wakefield owns and operates a wastewater treatment facility, which is a POTW, as that term is defined at 40 C.F.R. §§ 122.2 and 403.3.

16. During all times relevant to this Complaint, Waldbaum was the only “Industrial User” as that term is defined in 33 U.S.C. § 1362(18) to discharge non-domestic pollutants into the Wakefield POTW.

STATUTORY BACKGROUND

CLEAN WATER ACT

17. The Administrator of EPA may commence a civil action for appropriate relief when any person discharges pollutants to navigable waters without a permit, violates the requirements not to interfere with the operation of a POTW, or violates the terms or conditions of an NPDES permit. 33 U.S.C. § 1319(b).

18. The Clean Water Act, 33 U.S.C. § 1311(a), and implementing regulations, prohibit the discharge of pollutants into navigable waters of the United States by any person, except as in compliance with other sections of the Act, including Sections 307 and 402, 33 U.S.C. §§ 1317 and 1342, which govern activities subject to the Pretreatment Program and the issuance of NPDES permits.

19. The Clean Water Act defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

20. “Pollutants” within the meaning of the Clean Water Act include “biological materials . . . and industrial . . . and agricultural waste discharges into water.” 33 U.S.C. § 1362(6).

21. The Clean Water Act defines the term “point source” to include any “discernible, confined, and discrete conveyance, including but not limited to . . . any concentrated animal feeding operation . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14)

22. Navigable waters are “waters of the United States.” 33 U.S.C. § 1362(7).

23. Persons who discharge to a POTW are prohibited from introducing any pollutants to the treatment works that would cause “interference or pass through,” and must comply with other pretreatment standards. *See* 33 U.S.C. § 1317; 40 C.F.R. Part 403.

24. POTWs are required to develop and enforce specific effluent limits for industrial users in cases where pollutants contributed to the POTW by such users result in recurring interference and/or pass through at the POTW. 40 C.F.R. § 403.5(c)(2).

25. Effluent limitations, as defined in 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges into navigable waters of the United States.

26. The Administrator of the EPA may issue NPDES permits that authorize the discharge of pollutants into navigable waters of the United States, subject to conditions and limitations set forth in such permits. 33 U.S.C. § 1342(a).

27. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under 33 U.S.C. § 1342.

28. A state may establish its own NPDES permit program and, after receiving approval of its program from the Administrator of the EPA, may issue Clean Water Act NPDES permits. 33 U.S.C. § 1342(b).

29. A state may establish its own Pretreatment program by receiving approval of its program from the Administrator of EPA. 33 U.S.C. § 1342(b).

30. In states authorized to implement their own NPDES programs and Pretreatment programs, EPA retains authority, concurrent with authorized state NPDES and Pretreatment programs, to enforce state-issued permits. 33 U.S.C. §§ 1319 and 1342(i).

31. EPA approved the State's NPDES permit program under 33 U.S.C. § 1342(b), in June 1974.

32. EPA approved the State's Pretreatment program under 33 U.S.C. § 1342(b), in September 1984.

33. A Concentrated Animal Feeding Operation ("CAFO") is a point source that requires NPDES permits for discharges or potential discharges, where the NPDES permit requirements "apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal." 40 C.F.R. § 122.23(a).

34. EPA's regulations prior to February 12, 2003 defined a CAFO to include any "animal feeding operation" confining more than 1,000 animal units. EPA's regulations provided that 30,000 or more laying hens with a liquid manure handling system meet the definition of an animal feeding operation confining more than 1,000 animal units, at 40 C.F.R. Part 122, Appendix B.

35. EPA's regulations define "animal feeding operation" to include a lot or facility where (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. §122.23(b)(1).

36. EPA revised its NPDES regulations for CAFOs on February 12, 2003. Under the new regulations at 40 C.F.R. § 122.23(b)(4) a hen laying operation that confines 82,000 or more laying hens is considered a “large CAFO” regardless of the manure handling system.

37. EPA may issue administrative orders requiring compliance with the Clean Water Act, whenever EPA finds that a person is in violation of, *inter alia*, 33 U.S.C. § 1301. *See* 33 U.S.C. § 1319(a).

38. A person who violates the Clean Water Act by discharging without a permit, violating the Pretreatment Standards, or violating any permit condition or limitation in an NPDES permit shall be subject to a civil penalty not to exceed \$25,000 a day for each violation. 33 U.S.C. § 1319(d). Under 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, as amended, and pursuant to 28 U.S.C. § 2461, the civil penalty amount was raised to a maximum of \$27,500 per day for each violation occurring after January 30, 1997, and \$32,500 per day for each violation occurring after March 15, 2004 (*See* 69 Fed. Reg. 7121, February 13, 2004).

CLEAN AIR ACT

39. The Clean Air Act requires the Administrator of EPA, among other things, to promulgate regulations in order to prevent accidental releases of certain regulated substances. 42 U.S.C. § 7412(r).

40. Pursuant to 42 U.S.C. § 7412(r)(3) the Administrator has promulgated a list of regulated substances, with threshold quantities, and defining the stationary sources that will be subject to the accident prevention regulations.

41. Pursuant to 42 U.S.C. § 7412(r)(7), the Administrator promulgated regulations that address release prevention, detection, and correction requirements for listed regulated substances. *See* 40 C.F.R. Part 68.

42. These regulations require owners and operators of a stationary source that has more than a threshold quantity of a regulated substance in a process to develop and implement a risk management program that includes a process hazard assessment, a prevention program and an emergency response program. Under these regulations, a process is

any activity involving a regulated substance, including any use, storage, manufacturing, handling or onsite movement of such substances or any combination of these activities. For the purposes of this definition any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

40 C.F.R. § 68.3.

43. The regulations at 40 C.F.R. Part 68 further require the owner and operator of a stationary source to develop a risk management program, which must be described in a Risk Management Plan submitted to the EPA.

44. Pursuant to 42 U.S.C. § 7413(b), the Administrator may commence a civil action against any person that is the owner or operator of an affected source, to obtain a civil penalties and injunctive relief whenever such person has violated or is violating any requirement or prohibition of the Clean Air Act, including the requirements of 42 U.S.C. § 7412.

45. The Clean Air Act authorizes a civil penalty of up to \$25,000 per day for each violation. 42 U.S.C. § 7413(b). Under the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, as amended,

penalties of not more than \$27,500 may be assessed per day of each violation of 42 U.S.C. § 7412(r) occurring after January 30, 1997, and penalties of not more than \$32,500 may be assessed per day of each violation occurring after March 15, 2004. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004). ____

GENERAL ALLEGATIONS

CLEAN WATER ACT VIOLATIONS

46. The City of Wakefield owns and operates a single POTW. During all times relevant to this Complaint, the City's POTW was a controlled release lagoon system with fourteen lagoons. Five lagoons are dedicated to treatment of municipal wastewater. Nine lagoons were dedicated to treatment of industrial wastewater.

47. During all times relevant to this Complaint, Waldbaum was the sole industrial user of Wakefield's nine industrial wastewater lagoons.

48. On or about April 1, 2006, Waldbaum became the owner and operator of the industrial wastewater lagoons previously owned and operated by the City of Wakefield. Wakefield continues to own and operate the five municipal wastewater lagoons.

49. The State issued NPDES Permit number NE 0049018 to the City of Wakefield.

50. Permit number NE 0049018 contains final effluent limitations and other requirements for Wakefield's POTW.

51. Permit number NE 0049018 was reissued in 2001 and expired on March 31, 2006. The Permit was most recently reissued on April 1, 2006 and expires on October 31, 2008.

52. The State issued NPDES Permit number NE 0113735 to Waldbaum.

53. Permit number NE 0113735 was reissued on April 1, 2001 and expired on March 31, 2006. The Permit was most recently reissued on April 1, 2006 and expires on October 31, 2008.

54. Prior to March 31, 2006, Permit number NE 0113735 authorized discharge of wastewater to Wakefield's POTW.

55. Prior to March 31, 2006, Permit number NE 0113735 prohibited Waldbaum from causing pass through and/or interference at Wakefield's POTW.

56. During the past five years and before, Waldbaum has been sending an average daily flow to Wakefield's POTW greater than the POTW is designed to handle or is capable of handling.

57. Wakefield's POTW lagoon system relies on biological processes to reduce the level of pollutants in the water prior to its release into the receiving stream.

58. To reduce the level of pollutants adequately, wastewater must be retained in Wakefield's lagoon system long enough for the biological processes to work.

59. If Wakefield's lagoon system is overloaded, adequate time for treatment can only be achieved by allowing the lagoons to fill up above their normal operating depth. The resulting inadequate freeboard space may cause failure of the lagoons, leading to the discharge of under-treated wastewater into the receiving stream.

60. During the past five years and before, Waldbaum has increased the volume of, and amount of pollutants in, wastewater discharged to the POTW, resulting in numerous violations of Wakefield's NPDES permit effluent limits and requirement to operate its lagoons with adequate

freeboard space. The large volume of Waldbaum's discharges substantially contributes to the potential for major and recurring violations at Wakefield's POTW.

61. Pursuant to NPDES Permit NE 0113735, Wakefield submits Discharge Monitoring Reports to NDEQ setting forth monitoring results obtained from the POTW during each quarterly reporting period.

62. Wakefield's effluent limit violations are documented in the Discharge Monitoring Reports submitted to NDEQ.

63. On many occasions during the past five years and before, the City of Wakefield has operated its lagoons with inadequate freeboard space.

64. The State has issued numerous notices of violation to Wakefield for failure to maintain an adequate freeboard.

65. Wakefield's POTW discharges wastewater from a single outfall to Logan Creek, which is part of the Elkhorn River Basin.

66. Logan Creek is a "navigable water" and a "water of the United States" under 33 U.S.C. § 1362(7).

67. Wastewaters discharged from Wakefield's POTW contain "pollutants" within the meaning of 33 U.S.C. § 1362(6).

68. Discharges from Wakefield's POTW constitute "discharges of pollutants" within the meaning of 33 U.S.C. § 1362(12).

69. Waldbaum has violated the Clean Water Act at two of its egg laying farms in and near the City of Wakefield by improperly disposing of sludge on land at both egg laying farms in violation of its NPDES permit conditions. 33 U.S.C. § 1342.

70. Waldbaum has violated the Clean Water Act by improperly storing chicken manure in outdoor piles near a drainage ditch at one of the egg laying farms, which disposal and storage resulted in unlawful discharges to waters of the United States. 33 U.S.C. § 1311.

71. The City of Wakefield has also violated its NPDES permit standard conditions and other requirements for record keeping, sampling, and operation and maintenance in addition to the violations of its permit effluent limits caused by Waldbaum's excessive flows. 33 U.S.C. § 1342. _____

FIRST CLAIM FOR RELIEF

(Wakefield's Violation of NPDES Permit Limits)

72. The allegations of the foregoing paragraphs are incorporated herein by reference.

73. During all times relevant to this Complaint, Wakefield's NPDES permit for its POTW has imposed effluent limitations for carbonaceous biochemical oxygen demand ("CBOD"), total suspended solids ("TSS"), dissolved oxygen, and pH. Wakefield's NPDES permit has also contained monitoring requirements for flow and ammonia.

74. During the past five years and before, Wakefield has discharged pollutants from its POTW on numerous occasions in violation of the effluent limitations set forth in its NPDES permit for CBOD, TSS, and dissolved oxygen.

75. Wakefield's discharge of pollutants in violation of effluent limitations in its NPDES permit violated its NPDES permit and unlawfully discharged pollutants into waters of the United States under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342.

76. Unless enjoined, Wakefield's violations will continue.

77. Pursuant to 33 U.S.C. § 1319(b) and (d), Wakefield is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF

(Wakefield's Violation of NPDES Permit Conditions)

78. The allegations of the foregoing paragraphs are incorporated herein by reference.

79. During all times relevant to this Complaint, Wakefield's permit has required compliance with Standard Conditions requiring, among other things, the duty to mitigate, proper operation and maintenance, monitoring and records, and reporting requirements.

80. During the past five years and before, Wakefield has periodically failed to comply with the duty to mitigate requirement of its NPDES permit by failing to take all reasonable steps to minimize or prevent any discharge in violation of its NPDES permit that had a reasonable likelihood of adversely affecting the environment.

81. During the past five years and before, Wakefield has periodically failed to comply with the proper operation and maintenance requirement of its NPDES permit by, among other things, failing to maintain an adequate and safe level of freeboard in the POTW lagoons.

82. During the past five years and before, Wakefield failed to comply with the monitoring and records requirement of its NPDES permit by not keeping a log of all sample collections.

83. During the past five years, Wakefield has periodically failed to comply with reporting requirements of its NPDES permit by failing to submit written noncompliance reports to the NDEQ.

84. During all times relevant to this Complaint, Wakefield's permit has also contained other requirements including, among other things, monitoring requirements; operation and maintenance by certified operators; and a requirement that effluent discharges shall not cause noxious odors, floating, suspended colloidal or settleable materials that produce objectionable films, colors, turbidity or deposits.

85. Wakefield failed to comply with the monitoring requirements of its NPDES permit by failing to sample for ammonia in May 2001, June 2001, and June 2003.

86. Wakefield failed to comply with the monitoring requirements of its NPDES permit during the past five years by periodically taking ammonia improperly as grab samples rather than composite samples. Wakefield also failed to comply with monitoring requirements by periodically taking dissolved oxygen and pH as composite samples rather than grab samples.

87. During the past five years and before, Wakefield failed to comply with the monitoring requirements by not keeping a daily record of flow.

88. During the past five years, Wakefield has periodically failed to comply with the certified operator requirement by operating the POTW with an operator who is not certified by NDEQ.

89. An EPA inspection in June 2001 revealed that Wakefield failed to comply with the no noxious effluent requirement in its NPDES permit with the presence of a very red effluent causing surface foam on the receiving stream that extended for sixty meters.

90. Wakefield's failure to comply with the conditions of its NPDES permit violated of 33 U.S.C. §§ 1311 and 1342.

91. Unless enjoined, Wakefield's violations will continue.

92. Pursuant to 33 U.S.C. § 1319(b) and (d), Wakefield is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF

(Wakefield's Failure to Set Specific Effluent Limits for Waldbaum)

93. The allegations of the foregoing paragraphs are incorporated herein by reference.

94. Wakefield did not develop and enforce specific local effluent limits for its sole industrial user Waldbaum in violation of 40 C.F.R. § 403.5(c)(2).

95. Pollutants contributed to the POTW by Waldbaum resulted in pass through and/or interference, resulting in effluent limit violations by Wakefield's POTW. The pass through and/or interference and resulting effluent limit violations are likely to recur.

96. Specific effluent limits for Waldbaum, together with appropriate changes in Wakefield's POTW facility or operation, would have ensured renewed and continued compliance with the POTW's NPDES permit. 40 C.F.R. § 403.5(c)(2).

97. Wakefield's failure to develop and enforce specific local effluent limits for Waldbaum violated the pretreatment regulations at 40 C.F.R. § 403.5(c)(2).

98. Unless enjoined, Wakefield's violations will continue.

99. Pursuant to 33 U.S.C. § 1319(b) and (d), Wakefield is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004. _____

FOURTH CLAIM FOR RELIEF

(Waldbaum's Interference and/or Pass through at the POTW)

100. The allegations of the foregoing paragraphs are incorporated herein by reference.

101. Waldbaum's discharges to the POTW, alone or in conjunction with the discharge or discharges from other sources, have caused the City to violate the final effluent limitations of NPDES Permit number NE 0049018.

102. Waldbaum's discharges to the POTW, alone or in conjunction with the discharge or discharges from other sources, have caused Wakefield to violate the Standard Conditions of NPDES Permit number NE 0049018, by creating conditions under which Wakefield was unable to maintain adequate freeboard in the lagoon system.

103. The discharges from Waldbaum, which alone or in conjunction with the discharge or discharges from other sources have caused Wakefield to incur the violations stated above, constitute interference and/or pass through at the POTW.

104. Waldbaum's discharges to the POTW violated 33 U.S.C. §§ 1311 and 1317, and 40 C.F.R. § 403.5.

105. Unless enjoined, Waldbaum's violations will continue.

106. Pursuant to 33 U.S.C. § 1319(b) and (d), Waldbaum is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF

(Waldbaum's Unauthorized Discharge to Waters of the United States)

107. The allegations of the foregoing paragraphs are incorporated herein by reference.

108. Waldbaum owns and operates the Husker Pride facility located outside of Wakefield.

109. The Husker Pride facility is used by Waldbaum for egg laying, breaking, and washing and consists of pasture land, maintenance buildings, and 18 egg laying houses. The Husker Pride facility has a total capacity of approximately 2.5 million confined laying hens. Each of the 18 laying houses confine approximately 140,000 laying hens.

110. The Husker Pride facility confines laying hens for a total of 45 days or more in any given 12 month period.

111. Neither crops, vegetation, forage growth, or post-harvest residues are sustained in the normal growing season over any portion of the lot or facility.

112. The Husker Pride facility is a “concentrated animal feeding operation” as that term is defined at 40 C.F.R. § 122.23 and Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).

_____ 113. ___ During an EPA inspection on July 1, 2003, Waldbaum was storing thousands of tons of manure outside at the Husker Pride facility in a large storage pile up gradient from an unnamed drainage ditch that leads to Logan Creek.

114. During the past five years, Waldbaum has periodically stored large piles of manure outside at the Husker Pride facility.

_____ 115. ___ Waldbaum has discharged, on at least April 11, 2001, June 26, 2001, August 15, 2001, November 24, 2001, June 11, 2002, May 4, 2003, June 10, 2003, November 10, 2003, and November 11, 2003, and may continue to discharge in the future, manure-laden runoff from the Husker Pride facility to Logan Creek.

116. Waldbaum has not demonstrated that there is no potential to discharge at the Husker Pride facility.

117. Waldbaum does not have and has never had an NPDES permit that authorizes these discharges of manure-laden runoff.

118. The discharges from Waldbaum's Husker Pride facility to Logan Creek contained "pollutants" within the meaning of 33 U.S.C. § 1362(5).

119. The discharge of wastewater was to "navigable waters" within the meaning of 33 U.S.C. § 1362(7).

120. Each of these discharges of wastewater constituted a "discharge of pollutants" pursuant to 33 U.S.C. § 1362(12), from a "point source" as defined by 33 U.S.C. § 1362(14).

121. None of these discharges of wastewater described occurred during a 25-year, 24-hour storm event.

122. Waldbaum violated the Clean Water Act by discharging pollutants from the Husker Pride facility to navigable waters of the United States without a permit and by operating a CAFO without the required NPDES permit.

123. Unless enjoined, Waldbaum's violations will continue.

124. Pursuant to 33 U.S.C. § 1319(b) and (d), Waldbaum is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

SIXTH CLAIM FOR RELIEF

(Waldbaum's Violation of NPDES Permit Conditions through Improper Sludge Disposal)

125. The allegations of the foregoing paragraphs are incorporated herein by reference.

126. During all times relevant to this Complaint, Waldbaum's NPDES permit NE0113735 has required that "[s]olids, sludge, filter backwash or other pollutants removed in the course of treatment or control of wastewater shall be disposed of at a site and in a manner approved by [NDEQ]."

127. Prior to September 2003, Waldbaum had disposed of at least 165 million gallons of egg processing wastes ("sludge") over 160 acres of pasture at Husker Pride and Big Red Farms at sites and in a manner that were not approved by NDEQ.

128. Waldbaum's disposal of sludge violated the conditions of its NPDES permit in violation of 33 U.S.C. §§ 1311 and 1342.

129. Pursuant to 33 U.S.C. § 1319(b) and (d), Waldbaum is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

SEVENTH CLAIM FOR RELIEF

(Waldbaum's Violations of the Clean Air Act)

130. The allegations of the foregoing paragraphs are incorporated herein by reference.

131. Anhydrous ammonia is a regulated substance pursuant to 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.3.

132. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

133. On January 13, 2004, an EPA inspection revealed that Waldbaum had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

134. Waldbaum is therefore subject to requirements of 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68 because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

135. Waldbaum submitted its initial process hazard analysis for the anhydrous ammonia in 1995, as required by 40 C.F.R. § 68.67(a).

136. Waldbaum did not update its process hazard analysis at least once every five years after the submission of its initial analysis, as required by 40 C.F.R. § 68.67(f).

137. Waldbaum did not certify that its operating procedures were current and accurate as required annually by 40 C.F.R. § 68.69(c).

138. Waldbaum did not certify that a compliance audit had been completed at least once every three years as required by 40 C.F.R. § 68.79.

139. Waldbaum did not assure that each contractor employee is trained in the work practices necessary to safely perform his/her job related to the anhydrous ammonia as required by 40 C.F.R. §§ 68.87(b)(5) and 68.87(c).

140. Waldbaum's failure to meet the requirements of the implementing regulations violated 42 U.S.C. § 7412(r).

141. Pursuant to 42 U.S.C. § 7413(b), Waldbaum is liable for civil penalties of up to \$25,000 per day for each violation occurring before January 30, 1997, up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 a day for each violation occurring after March 15, 2004.

PRAYER OF RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Pursuant to 33 U.S.C. § 1319(b), enjoin the Defendants from any and all ongoing future violations of the Clean Water Act by ordering compliance with the Act, the Pretreatment Regulations, and the Pretreatment Standards.
2. Pursuant to 42 U.S.C. § 7413(b), enjoin Waldbaum from any and all further violations of the Clean Air Act by ordering compliance with 42 U.S.C. § 7412(r), and its implementing regulations.
3. Pursuant to 33 U.S.C. § 1319(d), assess civil penalties against the Defendants, as permitted by law, up to the date of judgment herein.
4. Pursuant to 42 U.S.C. § 6413(b), assess civil penalties against Waldbaum, as permitted by law, up to the date of judgment herein.
5. Order the Defendants to take all steps necessary to redress or mitigate the impact of their violations.

6. Award the United States its costs of this action.
7. Award such other and further relief as the Court may deem just and proper.

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

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