

CITY OF SILOAM SPRINGS, ARKANSAS

In the Matter of:)
)
Sager Creek Foods, Inc.) ORDER FOR ADMINISTRATIVE
14961 Readings Road) FINE AND RECOVERY OF COSTS
Siloam Springs, AR 72761)
)
) FEBRUARY 17, 2016
Proceedings under Siloam Springs)
City Code Sections 98-763 and 98-764)

AUTHORITY

This Order for Administrative Fine and Recovery of Costs is issued under the authority vested in the City of Siloam Springs City Administrator pursuant to Siloam Springs City Code Sections 98-763 and 98-764.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The City Administrator finds that Sager Creek Foods, Inc. ("Sager Creek Foods") is in violation of Pretreatment Permit No. 009, issued April 10, 2015 to Sager Creek Foods and in violation of Siloam Springs City Code Chapter 98, Article V, Industrial Pretreatment.

The City Administrator issued a Cease and Desist Order to Sager Creek Foods on October 7, 2015. The Cease and Desist Order was based on the following facts:

1. Pursuant to Authorization to Discharge Wastewater under the National Pollutant Discharge Elimination System and the Arkansas Water and Air Pollution Control Act, Permit Number AR0020273, issued to the City of Siloam Springs ("City") effective September 24, 2007 ("NPDES Permit"), the City is required to establish, implement, and enforce an industrial pretreatment program.
2. The City's Industrial Pretreatment Program was approved by Arkansas Department of Environmental Quality on August 22, 1984 and subsequently modified and approved on March 3, 2000 and on November 30, 2012. The City's Industrial Pretreatment Ordinance is set forth at City Code Chapter 98, Article V.
3. The City's Pretreatment Program implements Section 307(b) of the Federal Clean Water Act, 33, U.S.C. § 1317(b) and National Pretreatment Program requirements set forth at 40 C.F.R. Part 403.
4. Sager Creek Foods owns and operates a vegetable processing and canning plant at 14961 Readings Road, Siloam Springs, Arkansas, classified by SIC No. 2032, 2033, NAICS 311421, 311422. Sager Creek Foods is a non-domestic wastewater source in Benton County, Arkansas. Sager Creek Foods introduces pollutants within the meaning of Section 502(6) of the Federal Clean Water Act, 33 U.S.C. section 1362(6) and City Code 98-479, into the Siloam Springs sewer collection system for treatment in the Siloam Springs Wastewater Treatment Plant, which is a POTW within the meaning of Section 307(b), 33 U.S.C. section 1317(b), and

National Pretreatment Program regulations at 40 C.F.R. Part 403. Sager Creek Foods is a "User" as defined in City Code 98-479.

5. On April 10, 2015, the City issued Wastewater Discharge Permit No. 009, to Sager Creek Foods authorizing the discharge of pretreated wastewater from Sager Creek Foods to the City of Siloam Springs sewer collection system and City POTW (Pretreatment Permit).
 - (a) The Pretreatment Permit sets forth numerical discharge limitations, best management practices, monitoring and recordkeeping, and notification and reporting requirements, all as required to implement the City’s Pretreatment Program and the National Pretreatment Program.
 - (b) The Pretreatment Permit, Part II. Section A, requires that the permittee, Sager Creek Foods, comply with all permit conditions and applicable provisions of the Federal Clean Water Act, the Arkansas Water and Air Pollution Control Act, City Code Article 98, Article V, and all orders, rules, and regulations issued pursuant to those laws.

6. The Pretreatment Permit, Part I. Section A – Discharge Limitations sets forth the following discharge limitations for discharges from Sager Creek Foods to the City POTW:

Pollutant	Daily Maximum (mg/l)	Maximum Monthly Average (mg/l)
Oil and Grease	100 mg/l	100 mg/l
pH	Between 6 – 9	N/A
Total Suspended Solids	900 mg/l	305 mg/l
BOD	900 mg/l	375 mg/l
COD	Report Only mg/l	Report Only mg/l
Maximum Discharge	1,500,000 MGD	1,500,000 MGD
Phosphorus (T)	15 mg/l	10 mg/l
Ammonia (NH ₃ -N)	20 mg/l	10 mg/l
Nitrate-Nitrogen (NO ₃)	10 mg/l	7 mg/l
Cyanide	Report only mg/l	Report only mg/l
Zinc	Report only mg/l	Report only mg/l
Copper	1.4 lbs/day	1.1660 lbs/day
Mercury	Report Only mg/l	Report Only mg/l
TKN	50 mg/l	45 mg/l

7. The Pretreatment Permit Part II. Section A, Paragraph 1 sets forth the permittee’s duty to comply as follows:

The permittee must comply with all conditions of this permit and all applicable provisions of the Federal Clean Water Act, 33 U.S.C. sections 1251 et seq., the Arkansas Water and Air Pollution Control Act, Ark. State. Ann. sections 82-1901 et seq., City Ordinance No. 1084, and all orders, rules, and regulations issued

pursuant to those laws. Any permit noncompliance constitutes a violation of the Federal Clean Water Act and the Arkansas Water and Air Pollution Control Act and is grounds for enforcement action, for permit termination, revocation and re-issuance, or modification, or for denial of a permit renewal application.

8. The purpose and policy of the City's Industrial Pretreatment Code is to prevent the introduction of pollutants into the City POTW that will pass through or otherwise be incompatible with the wastewater treatment works. City Code 98-746.
9. The National Pretreatment Regulations at 40 C.F.R. 403.5(a)(1) prohibit an industrial user from introducing into a POTW any pollutant(s) which cause pass through or interference.
10. City Code 98-479 and the National Pretreatment Regulations at 40 C.F.R. section 403.3(p) define pass through as:

A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation.

11. City Code 98-479 and the National Pretreatment Regulations at 40 C.F.R. section 403.3(k) define interference as:

A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore , is a cause of a violation of the city's NPDES permit.

12. The Pretreatment Permit, Part II. Section B, Paragraph 1 requires proper operation and maintenance as follows:

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and the City Ordinance 1084, 98-792. Proper operation and maintenance includes Best Management Practice (BMPs).

13. The Pretreatment Permit, Part II. Section B, Paragraph 7 requires the mitigation of power failures as follows:

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure by such means as alternate power sources, standby generators, or retention of inadequately treated effluent.

14. The Pretreatment Permit, Part II. Section D, Paragraph 6 requires twenty-four hour reporting as follows:

The permittee shall report any noncompliance which may endanger health or adversely affect the wastewater treatment facility. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The City may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit;
- (b) Any upset which exceeds any effluent limitation in the permit;
- (c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the City in Part I of the permit; and
- (d) Any act or event which may endanger public health or adversely affect the wastewater treatment facility.

15. The Pretreatment Permit, Part II. Section D, Paragraph 1 requires notification of planned changes as follows:

Any change in the facility discharge (including the introduction of any new source of discharge or changes in the quantity or quality of discharges of pollutants) must be reported to the permitting authority. In no case are any new connections, increased flows, or significant changes permitted that will cause violation of the discharge limitations specified herein.

City Code 98-621 requires 60 days' notification to the City of planned significant changes to operations or systems which might alter the nature, quality, or volume of its wastewater discharge.

16. The Pretreatment Permit, Part II. Section D, Paragraph 2 requires advance notice of anticipated noncompliance as follows:

The permittee shall give advance notice to the City of any planned changes in the permitted facility or activity which may result in noncompliance with permit

requirements. Such notice does not constitute any defense in any enforcement action.

17. The Pretreatment Permit, Part II. Section B, paragraph 5 and City Code 98-622 require notification of slug loading as follows:

In accordance with 40 CFR, Section 403.12(f), permittee shall notify the POTW (Phone No. 524-5623) immediately of any slug loading of any pollutant, including oxygen demanding pollutants (BOD, etc.) released to the POTW system at a flow rate and/or pollutant concentration which has the potential to cause interference with the POTW.

18. The Pretreatment Permit, Part II. Section B, Paragraph 3 requires mitigation of discharges as follows:

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health, the environment or the wastewater treatment plant. Adverse effects on the wastewater treatment plant include:

- (a) Biological upset of the plant;
- (b) Pollutant loadings to the plant causing pass through to the receiving stream;
- (c) Pollutant loadings which interfere with normal sludge disposal; or
- (d) Any discharge which directly or indirectly causes the plant to violate its NPDES permit.

19. On September 20, 2015 the City POTW operators noted odor at the POTW headworks. The operators checked all POTW operational parameters and confirmed the operations to be within parameters.

20. On September 23, 2015 the City POTW operators noted that the Biological Nutrient Removal (“BNR”) basin 3 experienced a change in color and responded by increasing aeration of the basin. Operators checked POTW operating parameters and confirmed operations to be within parameters. In accordance with the City’s discharge permit requirements, the City initiated collection of a composite sample at 10:00 am on September 23, 2015.

21. On September 24, 2015, the BNR basin 3 water resumed proper coloration. BNR basin coloration remained proper through September 27, 2015.

22. On September 28, 2015:

- (a) BNR basin 3 water changed color to black and effluent from the POTW was milky in color;

- (b) The City POTW operators declared BNR basin 3 to be in upset and notified the Arkansas Department of Environmental Quality of upset;
 - (c) The City POTW operators diverted POTW influent flow to the POTW storm water basin to mitigate damage to the BNR basin and mitigate impact on effluent quality;
 - (d) The City POTW operators began operation of a second treatment train utilizing BNR basin 1 at the POTW to provide additional treatment and to mitigate the impact of upset of the BNR basin 3;
 - (e) The City POTW operators began investigation of the cause of the upset of BNR Basin 3;
 - (f) The City POTW operators' investigation included a phone call to Sager Creek Foods during which call the City was informed that Sager Creek Foods was discharging high levels of Biological Oxygen Demand (“BOD”).
23. On September 29, 2015, under authority of City Code 98-765 Emergency Suspensions, the City requested that Sager Creek Foods cease all discharges to the City POTW. Sager Creek Foods complied with the emergency suspension request.
 24. On September 29, 2015, the Oklahoma Fish and Game Commission contacted the City Wastewater Superintendent to inform him of a fish kill in Sager Creek, the POTW effluent receiving stream.
 25. On September 29, 2015 representatives of the Arkansas Department of Environmental Quality (“ADEQ”) and the Oklahoma Department of Wildlife Conservation began investigation of the upset and fish kill.
 26. Sager Creek Foods violated Pretreatment Permit, Part I. Section A – Discharge Limitations as follows:

Discharge Date	BOD daily max limit 900 mg/l	BOD monthly ave limit 375 mg/l	pH daily max limit between 6-9
June			9.3 S.U.
9-22-15	1,790.0		
9-23-15	1746.0		
9-24-15	1,913.0		
September		668	

27. Sager Creek Foods failed to report the above discharges pursuant to Pretreatment Permit, Part II. Section D, Paragraph 6 requiring twenty-four hour reporting of any noncompliance which may endanger health or adversely affect the wastewater treatment facility thus violating the Pretreatment Permit.

28. Sager Creek Foods failed to notify the City of planned changes as required by Pretreatment Permit, Part II. Section D, Paragraphs 1 and 2, thus violating the Pretreatment Permit and failed to notify the City of any planned changes in operations or the discharger's system which might alter the nature, quality, or volume of wastewater discharge as required by City Code 98-621 thus violating the City Code 98-621.
29. Sager Creek Foods failed to notify the City of potential problems pursuant to City Code 98-622 which requires that a discharger immediately telephone and notify the City of any discharge, including, but not limited to accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, thus violating City Code 98-622.
30. Sager Creek Foods failed to notify the City of slug loading pursuant to Pretreatment Permit, Part II. Section B, Paragraph 5 thus violating the Pretreatment Permit and City Code 98-622.
31. Sager Creek Foods failed to take mitigating measures in response to the discharges documented above in violation of the duty to mitigate mandated by Pretreatment Permit Part II. Section B, Paragraph 3, thus violating the Pretreatment Permit.
32. Sager Creek Foods failed to properly operate and maintain its facilities and systems of treatment and control as mandated by Pretreatment Permit Part II. Section B, Paragraph 1, thus violating the Pretreatment Permit.
33. Sager Creek Foods failed to maintain adequate safeguards to mitigate power failures and the discharge of untreated or inadequately treated wastes as mandated by Pretreatment Permit Part II. Section B, Paragraph 7, thus violating the Pretreatment Permit.
34. On December 7, 2015, the Oklahoma Department of Wildlife Conservation issued a letter and claim resulting from its investigation into the fish and wildlife resource impacts resulting from the incident described in the paragraphs above. A copy of the letter and claim are attached as Exhibit A.

ORDER FOR ADMINISTRATIVE FINE AND
RECOVERY OF COSTS

35. City Code 98-763 provides administrative fines not to exceed \$1,000.00 per violation per day for violations of the Ordinance, a wastewater discharge permit or order, or any other pretreatment standard or requirement.
36. City Code 98-763 provides that costs of preparing administrative enforcement actions may be recovered.
37. Based upon the foregoing and having taken into account the magnitude of the violation, duration of the violation, effect of the violation on the receiving water, effect of the violation on the City, compliance history of Sager Creek Foods and

good faith of Sager Creek Foods, the City hereby orders Sager Creek Foods pay an administrative fine as described in paragraph 38, below.

38. Within thirty (30) days, Sager Creek Foods is ordered to pay an administrative fine of \$75,229.10 for the violations described in Paragraphs 19-34, above, and costs of preparing the Cease and Desist Order and this Order for Administrative Fine and Recovery of Costs. This includes:
- (a) City costs of preparing the administrative enforcement actions of \$21,351.87;
 - (b) Fisheries damage and investigative costs assessed by Oklahoma Department of Wildlife Conservation order of \$15,877.23; and
 - (c) Administrative fines for the violations described above, including \$30,000 for effluent violations and \$8,000 for permit violations, reporting, mitigation and proper operation and maintenance violations.
39. The penalty may be paid by check or cashier's check made payable to "City of Siloam Springs, Wastewater Division" and sent to:

City of Siloam Springs
Water/Wastewater Department
P.O. Box 80
Siloam Springs, AR 72761

JURISDICTION

40. The City and Sager Creek Foods agree that the City has jurisdiction to enter this Order for Administrative Fine and Recovery of Costs.

RESERVATION OF ASSESSMENT OF ADMINISTRATIVE PENALTY AND COSTS

41. The City reserves its right to issue subsequent orders to recover administrative penalties, including any fines, claims or costs issued to the City by legal authorities, separately from this Order for Administrative Fine and Recovery of Costs.
42. Pursuant to City Code 98-763, this Order for Administrative Fine and Recovery of Costs does not bar against the City taking any other action against Sager Creek Foods.

EFFECT OF ORDER

43. This Order for Administrative Fine and Recovery of Costs is not and shall not be interpreted to be a pretreatment permit or in any way extinguish, waive, satisfy, or otherwise affect the obligation of Sager Creek Foods to comply with the Federal

Clean Water Act, the Arkansas Water and Air Pollution Control Act, the City Code Industrial Pretreatment Program, or the Pretreatment Permit.

- 44. Failure to comply with the requirements of this Order for Administrative Fine and Recovery of Costs shall constitute a further violation of the City Code and may subject Sager Creek Foods to administrative fines, or civil or criminal penalties, or other such enforcement response as may be necessary.

RIGHT OF APPEAL

- 45. This Order may be appealed pursuant to City Code 98-767.

This Order takes effect upon signature.

Signed:

Dated:

February ____, 2016

Phillip Patterson,
City Administrator
City of Siloam Springs, Arkansas

CERTIFICATE OF SERVICE

I CERTIFY that this Order for Administrative Fine and Recovery of Costs was personally served on _____ of Sager Creek Foods, Inc. on February __, 2016.

Signed:

Phillip Patterson
City Administrator
City of Siloam Springs, Arkansas