

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7016 0340 0000 4616 5485

June 6, 2017

Don Bluemke
Sr. VP of Operations
Saputo Dairy Foods
40236 State Highway 10
Delhi, NY 13753

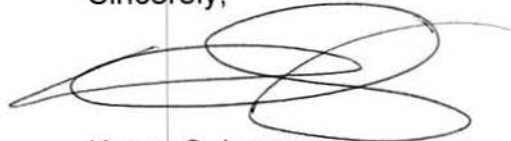
Re: Order on Consent
R4-2017-0321-110

Dear Mr. Frankel:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$12,960 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: K. O' Connor



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged
Violations of Environmental
Conservation Law Article 17

-by-

ORDER ON CONSENT
File No. R4-2017-0321-110

Saputo Dairy Foods USA, LLC
40236 State Highway 10
Delhi, N.Y. 13753

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department" or "DEC") is an agency of the State charged with jurisdiction over the protection of water quality of the State pursuant to Article 17 of the Environmental Conservation Law ("ECL") and the rules and regulations promulgated thereto.
2. Respondent is a person as defined at ECL §17-0105(1).
3. Respondent, Saputo Dairy Foods USA, LLC, located at 40236 State Highway 10, Delhi, New York has a State Pollutant Discharge Elimination System ("SPDES") Permit No. NY0068292 ("permit") which regulates the direct discharge of non-contact cooling water to the West Branch of the Delaware River, Class C(T).

First Violation

4. Respondent reported the following permit effluent limit violations in its monthly discharge monitoring reports (“DMRS”) for Outfall No. 001A. The following chart represents exceedances for 2012-2016.

Outfall # 001M NON-CONTACT COOLING WATER

Parameter Desc	Units	Stat Base	Mon. Period	Limit	DMR Value	% Exc.
Flow rate	gal/d	DAILY AV	09/30/2016	720000	=746026.00	4
Flow rate	gal/d	DAILY AV	10/31/2016	720000	=902378.00	25
Flow rate	gal/d	DAILY AV	11/30/2016	720000	=819586.00	14
Flow rate	gal/d	DAILY AV	12/31/2016	720000	=733150.00	2
Temperature, length of excursion	min/d	MAXIMUM	11/30/2016	120	=405.00	237
Temperature, water deg. fahrenheit	deg F	INST MAX	01/31/2012	80	=85.00	6
Temperature, water deg. fahrenheit	deg F	INST MAX	02/29/2012	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	05/31/2012	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	09/30/2012	80	=83.00	4
Temperature, water deg. fahrenheit	deg F	INST MAX	07/31/2013	80	=85.00	6
Temperature, water deg. fahrenheit	deg F	INST MAX	08/31/2013	80	=84.00	5
Temperature, water deg. fahrenheit	deg F	INST MAX	09/30/2013	80	=86.00	8
Temperature, water deg. fahrenheit	deg F	INST MAX	04/30/2014	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	09/30/2015	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	12/31/2015	80	=85.00	6
Temperature, water deg. fahrenheit	deg F	INST MAX	05/31/2016	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	08/31/2016	80	=82.00	3
Temperature, water deg. fahrenheit	deg F	INST MAX	10/31/2016	80	=81.00	1
Temperature, water deg. fahrenheit	deg F	INST MAX	11/30/2016	80	=120.00	50
Temperature, water deg. fahrenheit	deg F	INST MAX	12/31/2016	80	=82.00	3

5. Respondent’s SPDES permit (NY0068292) sets effluent limits on monthly discharge. ECL §17-0511 provides “*The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.*”

6. Pursuant to the chart set forth in paragraph #4, the facility exceeded the instantaneous maximum temperature effluent limit of 80 degrees Fahrenheit five (5) times in 2016, exceeded the allowable discharge criteria of 75 degrees Fahrenheit for no more than 120 minutes one (1) time in 2016 and exceeded the daily average flow effluent limit of 720,000 GPD four (4) times in 2016. In addition to the effluent violations, the discharge of non-contact cooling water that exceeds the thermal discharge criteria in regulations at 6 NYCRR Part 704 of 70 degrees Fahrenheit for trout waters is a concern although it is currently authorized by the SPDES permit. As such, these exceedances are a violation of both Respondent's SPDES permit and ECL § 17-0511.

7. ECL §71-1929 provides for the following civil penalties: "*A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued there under, shall be liable for a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.*"

8. Respondent has affirmatively waived its right to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order.

NOW, having considered this matter and being duly advised, **IT IS HEREBY**

ORDERED THAT:

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of TWELVE THOUSAND NINE HUNDRED SIXTY DOLLARS (\$12,960) which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without prior notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Water Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondent, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

XIV. This Order shall not create any presumption of law or fact which shall inure to the benefit of any person other than the Department, State or Respondent.

DATED: *June 5* 2017
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:



A handwritten signature in blue ink, appearing to read 'Keith Goertz', is written over a horizontal line.

Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Saputo Dairy Foods USA, LLC

Authorized Representative Don Blumke

SIGNED: [Signature]

TITLE: SVP Operations

DATE: 6/2/17

STATE OF ~~NEW YORK~~ ^{also} TEXAS

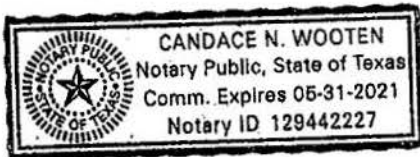
)ss.:

COUNTY OF DALLAS)

On the 2nd day of June in the year 2017 before me, the undersigned, a Notary Public in and for the State, personally appeared Don Blumke personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Candace N. Wooten

Notary Public
Qualified in the County of: Dallas
My Commission Expires: 05/31/2021



Schedule of Compliance

1. Within 60 days of the effective date of the signed Order on Consent ("Order"), Respondent shall submit to the Department, an engineering report prepared by a professional engineering licensed in and by the State of New York that discusses the cause(s) of the SPDES permit effluent violations for temperature and flow during 2016 and provides corrective measures and an implementation schedule to bring the facility into compliance with all current SPDES permit requirements prior to implementing the comprehensive thermal study below.

2. Within 90 days of the effective date of the signed Order, Respondent shall submit to the Department, a plan and schedule for a comprehensive thermal study of the West Branch of the Delaware River which includes in-stream continuous temperature monitoring and takes into consideration the temperature upstream and downstream of the facilities and tributary systems in the vicinity of the facility. The development of the plan and schedule for the comprehensive thermal study must be coordinated with the Department's Division of Fish and Wildlife and must be approved prior to implementation. The plan and schedule shall become an enforceable part of the Order upon approval. The results of the comprehensive thermal study will be reviewed to determine the SPDES effluent limits for temperature necessary to protect the propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water as required by regulations at 6 NYCRR Part 704. The Respondent hereby agrees to accept a Department initiated SPDES modification related to the results of the comprehensive thermal study as long as the effluent limits for temperature are no more stringent than the requirements of regulations at 6 NYCRR Part 704.