

STATE OF MINNESOTA
IN COURT OF APPEALS

Dairy Farmers of America, Inc.,

Relator,

vs.

SETTLEMENT AGREEMENT

City of Zumbrota,

A15-0373

Respondent.

The parties ("Parties") to this settlement agreement are Dairy Farmers of America, Inc. ("DFA") and the City of Zumbrota ("City"). The Parties agree as follows:

1. The Parties agree that this certiorari action in the Court of Appeals may be dismissed without prejudice and without costs, disbursements, or attorney fees to any party. The Parties agree to cooperate in drafting, signing, and filing any papers necessary to obtain the dismissal of this action.
2. For the years 2015 and 2016, the sewer usage rates for Biochemical Oxygen Demand ("BOD") will hold at those rates previously adopted by the City: \$20.25 per hundred pounds for the remainder of 2015 and \$25.25 per hundred pounds in 2016. No additional rate changes for BOD shall be made until 2017. BOD rate changes may be made only after the City performs a study which determines a rate in accordance with applicable law.
3. Section F.1.a. through d. of the Permit to Discharge Wastewater From Dairy Farmers of America, Inc. To The City of Zumbrota Wastewater Treatment Facility, effective January 1, 2014 and modified January 26, 2015 (the "Wastewater Permit") shall be revised to reduce the penalties for those certain daily maximum and three-test

average BOD and daily maximum and three-test average Total Suspended Solid (“TSS”) violations to \$4.50 per pound for any month in which there are a total of five or fewer BOD or TSS violations at DFA’s Zumbrota plant and an addition to section F.1. shall be added to provide for a \$7.50 per pound penalty for the same daily maximum and three-test average BOD and daily maximum and three-test average TSS violations for any one month in which there are a total of six or more violations of the BOD or TSS limits at DFA’s Zumbrota plant. In the event that prior to January 1, 2107, there are three or more consecutive months where DFA has six or more violations of BOD or TSS violations, the Parties agree that the City may then modify its BOD and TSS penalty rates through appropriate legal process, consistent with applicable law. For purposes of computing the number of violations in any given calendar month, the number of violations is determined by adding the number of BOD violations to TSS violations and includes both daily maximum and three-test average violations.

4. A draft revision to the Wastewater Permit is attached to this agreement as Exhibit A (the “Revised Wastewater Permit”). The Parties have agreed that the terms of this Settlement Agreement are incorporated into the Revised Wastewater Permit and the parties agree that the Revised Wastewater Permit will become final immediately after approval of this settlement agreement by the City Council, the signing of this settlement agreement by the Parties, and the Court’s agreement to the dismissal of this action.

5. Before the City increases sewer use rates set forth in paragraph E.3 or penalties listed in paragraph F.1 or F.2 of the Revised Wastewater Permit, based on a study that it is now in the process of commissioning from a consultant (or any other study upon which the City will base sewer use rates or revise penalties set forth in the Revised Wastewater Permit), the City will provide DFA with a copy of the consultant’s report or

study, give DFA sixty days to review and comment on the report or study, and hold a hearing before the City Council at which the sewer use rates applicable to DFA and Revised Wastewater Permit penalties will be determined or revised after interested parties, including DFA, are given an opportunity to present their positions with respect to the rates and penalties. The City and DFA shall cooperate to timely provide any information needed for the study and comments. The sewer use rates and Revised Wastewater Permit penalties set by this process may not take effect until January 1, 2017.

6. DFA is now current on its sewer usage bills and both parties agree not to challenge any prior charges or penalties included in the sewer usage bills that have previously been submitted and paid.

7. In the event that the DFA's Zumbrota plant is transferred before January 1, 2017, to an entity in which DFA has at least a 50% equity ownership interest, the Revised Wastewater Permit may be transferred to the new owner, at the new owner's option, without change, if the new owner agrees in writing to be bound by the permit's terms and there is no significant change in plant operations.

Dated: _____

Dairy Farmers of America, Inc.

By _____

Its _____

Subscribed and sworn to before me
this _____ of _____, 2015.

Notary Public

Signature page to settlement agreement in Dairy Farmers of America, Inc. v. City of Zumbrota, File No. A15-0373.

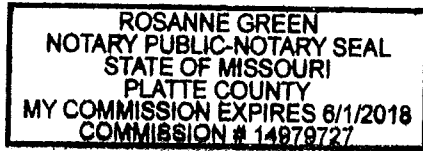
Dated: 5-11-15

Dairy Farmers of America, Inc.

By [Signature]
Its Vice President of Manufacturing

Subscribed and sworn to before me
this 11th of May, 2015.

[Signature]
Notary Public



Signature page to settlement agreement in Dairy Farmers of America, Inc. v. City of Zumbrota, File No. A15-0373.

Dated: 5-13-2015

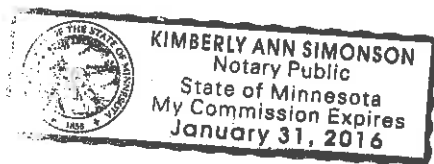
City of Zumbrota

By Richard L. Bauer

Its Mayor

Subscribed and sworn to before me
this 13th of May, 2015.

Kimberly Ann Simonson
Notary Public



Signature page to settlement agreement in Dairy Farmers of America, Inc. v. City of Zumbrota, File No. A15-0373.

Permit to Discharge Wastewater

From

Dairy Farmers of America, Inc.

To The

City of Zumbrota

Wastewater Treatment Facility

Effective January 1, 2014

Expires December 31, 2018

Modified [__-__-2015]

In compliance with the provisions of the United States Environmental Protection Agency General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403.8 (f)(1), which grants legal authority to Publicly Owned Treatment Works to apply and enforce the requirements of the pretreatment program for significant industrial users, Dairy Farmers of America, Inc. is authorized by the City of Zumbrota to discharge wastewater to the public sewer system in accordance with the effluent limitations, monitoring requirements other conditions set forth in this permit.

This permit has been issued to Dairy Farmers of America, Inc., upon the fulfillment of the conditions set forth in the Zumbrota Wastewater Disposal Ordinance and becomes effective immediately upon issuance. The conditions of this permit supersede any arrangements or requirements established by the City of Zumbrota pertaining to discharges from Dairy Farmers of America Inc., to the public sewer system.

This permit shall expire December 31, 2018. At that time City Council shall review permit violations and may adjust penalty amounts higher. In addition, either a new 2 year permit will be issued or a 5-year permit. The terms and conditions of the permit may be subject to modification during the term of the permit if effluent limitations for the publicly owned treatment works, as set forth in the NPDES permit are modified. The NPDES permit grants authority to the City of Zumbrota to discharge treated wastewater to the North Branch of the Zumbro River. The City of Zumbrota shall notify Dairy Farmers of America, Inc. of any change in this permit at least 60 days prior to the effective date of change.

The permit and authorization to discharge shall be nullified in the event that Dairy Farmers of America, Inc. increases its production capacity or modifies its industrial process in such a way the quantity or strength of its waste will exceed the effluent limitations of this permit, at which time a revised permit and new limitations shall be established. Dairy Farmers of America, Inc. shall be responsible for applying for a new discharge permit at least 90 days prior to a proposed production increase or process modification.

A. INDUSTRIAL PROCESS DESCRIPTION

Dairy Farmers of America, Inc. uses whole milk and whey to manufacture cheese and dairy products, It is a continuous process so wastewater is always being discharged to the City sewer system. The process water being discharged is from the cleaning of equipment and other uses.

B. EFFLUENT LIMITATIONS

1. The effluent from Dairy Farmers of America, Inc., is subject to the following effluent limitations where it enters the public sewer system.

<u>EFFLUENT PARAMETER</u>	<u>DAILY MAXIMUM</u>	<u>3-Test Average</u>
Flow	338,000 gallons per day	260,000 gallons per day*
BOD5	3,510 pounds per day	2,700 pounds per day
TSS	1,300 pounds per day	1,000 pounds per day

2. *The flow parameter will not be subject to any permit parameter at this time. During the interim permit period both the City of Zumbrota and Dairy Farmers of America will be exploring options regarding the flow.
3. The pH shall not be less than 6.5 nor greater than 10.0. These upper and lower limitations are not subject to averaging and shall be met at all times.
4. There shall be no discharge of visible foam in other than trace amounts.
5. The discharge shall not contain oil or other substances in amounts sufficient to create a visible color film on the surface of the wastewater.
6. There shall be no discharge of grease and or milk fats.

C. MONITORING AND REPORTING

1. Dairy Farmers of America, Inc. shall be responsible for continuously monitoring flow and pH of the wastewater from its facility. Monitoring equipment shall be placed in the sampling station next to the equalization tank in front of the plant on North Star Drive. If Dairy Farmers of America, Inc. propose a monitoring site other than the sampling station for any reason, the City must approve the new site before a new monitoring system can be initiated.
2. Dairy Farmers of America, Inc. must have in place a flow proportional sampling device and shall take daily 24 hour composite samples of their wastewater. The City will provide one liter plastic bottles into which the composite sample will be poured. The City shall have authority to enter the sampling station on a daily basis for the collection of the daily sample. This sample shall be taken by 9:00 a.m. In addition, the City shall have the authority to enter the sampling station at any time for purposes of inspection or installation of its own monitoring equipment. In addition, the City shall have authority to install its own pH monitoring and flow recording equipment at any time without notifying Dairy Farmers of America, Inc. All access to the sampling station shall be made through the fence outside of the main building. The only area in the plant that the City shall enter without prior permission is the maintenance area, solely for the purpose of collecting samples.

3. Dairy Farmers of America, Inc. shall be responsible for calibrating and maintenance on its analytical instruments as required insuring the accuracy of measurements. In the event that monitoring equipment must be out of service for any length of time, Dairy Farmers of America, Inc. shall inform the City of the condition and estimated duration of non-service.
4. Dairy Farmers of America, Inc. shall grant the City access to the industry's monitoring and recording equipment at the City's request for purposes of inspection or data collection.
5. The City of Zumbrota shall run tests for BOD5 & TSS and any other test as deemed necessary on the collected daily samples from Dairy Farmers of America, Inc. Costs for this testing will be billed monthly to DFA.

D. REPORTING

1. Dairy Farmers of America, Inc. must submit to the City, once a month, a report containing the daily records of wastewater flow. The report must be submitted to the City no later than the tenth of each month. The average daily flow as well as the total flow for the month shall be calculated. If requested, Dairy Farmers of America, Inc. shall submit to the City, a report containing daily records of whole milk and whey received from shipment as privileged information.
2. The failure to submit a monthly report shall be considered a violation of the conditions of this discharge permit and shall be subject to the violations procedures as set forth in this permit.

E. CALCULATION OF MONTHLY STATEMENT

1. Dairy Farmers of America, Inc. shall receive a statement of sewer use fees from the City of Zumbrota no later than the fifteenth of each month. The statement will be comprised of charges for Flow, Bod5, TSS, & Testing Fees. In addition to those charges listed any penalties and or capital improvement cost, after proper documentation provided to D F A, Inc. will also be contained in the monthly bill.
2. The following is the formula for arriving at the different components of the sewer use statement. The amount charged per unit of Flow, Bod5, TSS & shall be reviewed annually by the City Council and may be subject to change.

Flow ---Total of Daily Flow Figures for the Month

Bod5 ---The charge for BOD shall be calculated by taking the Total Flow for the month and multiplying by 200 mg/I and 8.34 lbs/gal. This shall be considered the domestic strength of the DFA discharge. This amount shall then be subtracted from the Total pounds of BO5 for the month. Then remainder shall be charged the monthly BOD rate as determined by the City Council.

TSS-----The charge for TSS shall be calculated by taking the Total Flow for the month and multiplying by 220 mg/l and 8.34lbs/gal. This shall be considered the domestic strength of the DFA discharge This amount shall then be subtracted from the Total pounds of TSS for the month. Then remainder shall be charged the monthly TSS rate as determined by the City Council.

Debt Service Charge ---Based on Dairy Farmers of America, Inc. Share of Bond Payments

Testing Fees ---per Contract Lab invoice

3. For 2015 the BOD sewer use rate is \$20.25 per hundred pounds of BOD. For 2016 the BOD rate will be \$25.25 per hundred pounds of BOD. The City intends to undertake a rate study to determine the rates in accordance with applicable law for 2017 and, notwithstanding paragraph E.2., BOD sewer use rates will not be increased beyond those specified herein until on or after January 1, 2017. DFA has the right to review and comment on the report of any consultant hired by the City to make recommendations concerning BOD rates or any other study or information relied upon by the City to set sewer use rates. If a consultant makes recommendations concerning the amount of penalties to be assessed under Section F, DFA has the right to review and comment on the consultant's recommendations concerning penalties. Once a consultant's report or study making rate and penalty recommendations is prepared and submitted to the City, the City shall within seven days provide a copy of the report to DFA. DFA shall then have 60 days to review and comment on the report and the City will not act to change sewer use rates or penalties until either: 1) the passage of 60 days from the date the City provided the report to DFA; or 2) the date DFA submits written comments in response to the consultant's report. It is agreed that the City will also hold a hearing before the City Council to set the sewer use rates and/or revise penalties, that such hearing will be after DFA has been given an opportunity to comment on the consultant's report or study, DFA will be given advance notice of the hearing, and that DFA will be given an opportunity to speak at the hearing. Whether or not the City retains a consultant, it is agreed that the City will give DFA advance notice and an opportunity to comment before any increase in BOD sewer use rates or penalties.

F. VIOLATIONS AND VIOLATION PROCEDURES

1. The discharge of wastewater not in compliance with the effluent limitations set forth in Section B of this permit shall be considered a violation subject to the violation procedures and or violation fines described herein. The penalties for BOD5 or TSS limit violations in this Section F.1. shall not be revised until on or after January 1, 2017, unless, as provided below, there are three or more consecutive months in which DFA has six or more BOD or TSS violations.

For any month in which there are five or fewer violations of the BOD5 or TSS limits, the penalties shall be as follows:

a. The BOD5 Daily Maximum penalty shall be \$4.50 per pound for any amount over

3510 lbs/day.

- b. The Daily Maximum TSS penalty shall be \$4.50 per pound for any amount over 1300 lbs/day.
- c. The 3-Test Average BOD5 penalty shall be \$4.50 per pound for any amount over 2710 lbs/day.
- d. The 3-Test Average TSS penalty shall be \$4.50 per pound for any amount over 1000 lbs/day.

For any month in which there are six or more violations of the BOD5 or TSS limits, the penalties shall be as follows:

- a. The BOD5 Daily Maximum penalty shall be \$7.50 per pound for any amount over 3510 lbs/day.
- b. The Daily Maximum TSS penalty shall be \$7.50 per pound for any amount over 1300 lbs/day.
- c. The 3-Test Average BOD5 penalty shall be \$7.50 per pound for any amount over 2710 lbs/day.
- d. The 3-Test Average TSS penalty shall be \$7.50 per pound for any amount over 1000 lbs/day.

In all cases DFA shall pay the monthly sewer use rate for each parameter on the total pounds for the month. The penalties shall only apply to the pounds that are over the permitted level.

In the event that prior to January 1, 2017 there are three or more consecutive months where DFA has six or more violations of BOD or TSS violations, the Parties agree that the City may then modify the BOD and TSS penalty rates in this permit through appropriate legal process, consistent with applicable law.

For purposes of computing the numbers of violations in any given calendar month, the number of violations is determined by adding the number of BOD violations to TSS violations and includes both daily maximum and three-test average violations.

Flow Violations will not be penalized at the time of occurrence but may be added in the future.

- a. If at anytime the wastewater being discharged from Dairy Farmers of America, Inc. exceeds the pH limits as set forth in Section B. 2., or if the concentration of grease and fat in the wastewater exceeds 300 mg/l a permit violation shall have occurred, and a fine of \$1500.00 per occurrence.

b. If the monthly monitoring report for any reason is not submitted to the City by the tenth (10) day of the month, Dairy Farmers of America, Inc. shall notify the City to explain reasons for the lateness, at which time the City may assess a fine not to exceed \$500.00. Each subsequent day on which the report is not received shall be a violation subject to an additional \$100 fine.

2. In the event that either the flow or pH monitoring or sampling equipment owned and operated by Dairy Farmers of America, Inc. is out of service for any length of time, Dairy Farmers of America, Inc. must report the condition to the City at once via telephone, and estimate the length of time the equipment will be out of service. If the equipment remains out of service for longer than 48 hours, the City may elect to temporarily assume the flow or pH monitoring duties until the industry's equipment is returned to service, with all costs associated with the temporary monitoring program assessed to Dairy Farmers of America, Inc.
3. In the event that a fine is assessed against the City of Zumbrota by the Minnesota Pollution Control Agency or the Environmental Protection Agency because of problems at the Wastewater Treatment Facility brought about by the wastewater discharge from the Dairy Farmers of America, Inc. the fine shall be passed directly onto Dairy Farmers of America, Inc.

G. ACCIDENTAL DISCHARGES

Dairy Farmers of America, Inc. shall notify the City immediately upon having a slug or accidental discharge of substance or wastewater in violation of this permit in order to enable counter measures to be taken by the City to minimize damage to the treatment system and receiving waters. Failure to notify the City of Zumbrota of such a discharge shall result in a double fine. Such notification shall not relieve Dairy Farmers of America, Inc. of liability for any expense, loss or damage to the treatment system or treatment process, or for any fines imposed on the City on account of any State or Federal law.

H. SUSPENSION OF PERMIT

The City may suspend the wastewater treatment service and/or discharge permit when such suspension is necessary, according to the procedures described in the wastewater discharge ordinance or if there are 20 permit violations during a 60-day period. The City may revoke this permit if Dairy Farmers of America, Inc. fails to factually report the wastewater constituents and characteristics of its discharge; fails to report significant changes in wastewater constituents or characteristics; refuses reasonable access to its premises for the purpose of inspection or monitoring; or violates conditions of the permit, the wastewater discharge ordinance or applicable State and Federal regulations.

I. NOTIFICATION OF VIOLATION

In the event of a violation of this permit, the City shall notify Dairy Farmers of America, Inc. through the monthly sewer bill and report. Dairy Farmers of America, Inc. shall have 20 days to appeal the violation. Said appeal must be addressed to the City Administrator in writing.

This permit as approved by ordinance of the City Council of the City of Zumbrota and signed by the Mayor of the City of Zumbrota shall become effective January 1, 2014 and shall be reviewed bi-annually and expire December 31, 2018.

Richard R. Bauer, Mayor

Attest:

Neil Jensen, City Administrator