

BEFORE THE BOARD OF COMMISSIONERS OF THE
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

NUTRIPAK, LLC,)	
)	
Petitioner/Appellant,)	Case No. 23B-008
)	
v.)	(Appeal Under Sewage and
)	Waste Control Ordinance)
METROPOLITAN WATER)	
RECLAMATION DISTRICT OF)	
GREATER CHICAGO,)	Hearing Officer: Heather A. Begley
)	
Respondent/Appellee)	

Clerk of the District
DEC 19 2024
Metropolitan Water Reclamation
District of Greater Chicago

MEMORANDUM AND ORDER

Petitioner Nutripak, LLC's ("Nutripak") filed an appeal seeking to rescind the Notice of Noncompliance No. 98025 issued on June 3, 2023. Pursuant to 735 ILCS 5/2-1005, a defendant may, at any time, move with or without supporting affidavits for a summary judgment in his or her favor as to all or any part of the relief sought against him or her. In the instant case, Respondent, Metropolitan Water Reclamation District of Greater Chicago ("MWRD"), has moved for summary judgment on all issues to dispose of Nutripak's appeal.

The Notice of Noncompliance arises from a sample taken on June 6, 2023 from Nutripak's waste stream, which tested for a concentration of fats, oils, and grease ("FOG") of 278.7 mg/L.

MWRD has a local limit for FOG of 250.0 mg/L. On June 6, 2023, the sample of 278.7 mg/L exceeded this amount. A Notice of Noncompliance (No. 98025) was issued to Nutripak, LLC, with a fine of \$2,500. On September 20, 2023, Nutripak requested that the charge be rescinded to which the Monitoring and Research Department ("M&R Department") at MWRD declined in a written determination on October 6, 2023. In a timely manner, on October 24, 2023, Nutripak requested an administrative hearing before an impartial hearing officer to appeal the

M&R Department's written determination. At the hearing, three bases for appeal were cited and memorialized:

- a. Whether the District's procedures for obtaining samples of "Fats, Oils, and Grease" ("FOGS"), which entails taking multiple dips into a waste stream, and splitting each dip into two separate jars (as more fully described in the highlighted "FOG METHODOLOGY" portion of the attached District "Standard Operating [Guideline}") compl(ies) with the requirements of 40 CFR 403 Appendix E and other applicable law;
- b. Whether the failure to clean and remove residual substances from the container used to obtain samples from the waste stream prior to the testing of each Industrial User for FOGs complies with the requirements of 40 CFR 403 Appendix E and other applicable law; and
- c. Whether the challenged procedures in paragraphs (a) and/or (b) above caused the wastewater samples collected at Nutripak 's facility to yield test samples that did not accurately reflect the FOG contents of Nutripack's effluent.

Based upon a review of the briefing and arguments held at the hearing on this matter, summary judgment is granted in favor of MWRD. There is no genuine issue of material fact to support Nutripak's argument that the test samples collected on June 3, 2023 failed to accurately reflect the FOG contents of Nutripak's waste stream at that time or that the MWRD did not collect the sample on that date pursuant to 40 CFR 403.

The method employed by MWRD on June 3, 2023 to collect the test samples falls within the processes and procedures established for collecting samples pursuant to 40 CFR Appendix E. There is insufficient evidence to support that the containers used to collect the sample on June 3, 2023 were not clean or contained residual substances on the container.

The parties disagree regarding whether a "grab sample" permits "double dipping". This is a valid

argument by Nutripak because at first glance, the use of the word "individual" in the definition of a grab sample seems to imply that the sample collector has "one shot" at a sample. Pursuant to the definition and description for "grab sampling" under the Code, Grab Sampling vs. Composite Sampling: 40 CFR § 403, Appendix E defines a grab sample as "an individual sample collected over a period of time not exceeding 15 minutes." 40 CFR § 403, App. E. Similarly, the SWCO defines a grab sample as "a single aliquot sample collected over a period not to exceed 15 minutes." However, the inclusion of a time period in the definitions supports the MWRD's process in collecting a sample. Although the use of the term, "individual" could be interpreted in some contexts as "single", "solo" or "one", the inclusion of an amount of time in the definition, i.e., 15 minutes, clarifies that the sample is created by dipping, multiple times if necessary, into the waste stream within in a fifteen minute time period. A grab sample could have otherwise been defined as one dip into the waste stream if the intent was to not permit multiple dips. A composite sample, on the other hand, is a sample taken over a longer period. For example, Appendix E states that "[i]t is recommended that influent and effluent operational data be obtained through 24-hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. If discrete sampling is employed, at least 12 aliquots should be composited." 40 CFR § 403, App. E. The SWCO makes a similar time distinction, defining a composite sample as "a representative mixture of a minimum three grab sample aliquots obtained over a period of time." Method 1664A provides further explanation of this time distinction. It states that in circumstances when composite measurement is required, "individual grab samples collected at prescribed time intervals must be analyzed separately and the concentrations averaged. Alternatively, samples can be collected in the field and composited in the laboratory. For example, collect four individual 250-mL samples over the course of a day." (See MWRD Ex. 22 at 11, Sec. 8.3.)

The dates wherein Nutripack offered in support of MWRD not properly cleaning the containers used to collect samples did not include the June 3, 2023 date. The parties offered July 8-10, 2022, September 6, 2023, and January 17, 2024 as the dates do not create a genuine issue of material of fact.

The original fine of \$2,500 is upheld. The parties shall confer regarding resolution and advise the undersigned of an agreed date for a conference regarding settlement or payment of the fine.



Heather A. Begley