

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105

** FILED **
14AUG2018 - 10:40AM
U.S.EPA - Region 09

IN THE MATTER OF:)	DOCKET NO. CWA-09-2018-0004
)	
Royal Wine Corporation d/b/a)	
Royal Kedem)	COMPLAINT, CONSENT AGREEMENT
Oxnard, California)	AND FINAL ORDER
)	
Respondent.)	<i>Class II Administrative Penalty Proceeding</i>
)	<i>under Section 309(g) of the Clean Water Act,</i>
)	<i>33 U.S.C. § 1319(g), and 40 C.F.R. §§</i>
)	<i>22.13(b) and 22.18</i>

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 307 of the Act, 33 U.S.C. § 1317. The Administrator has delegated this authority to the Regional Administrator of EPA Region IX, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter "Complainant."
3. Respondent is Royal Wine Corporation d/b/a/ Royal Kedem.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F. R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by the EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 307(d), 33 U.S.C. § 1317(d), prohibits any owner or operator of any source to operate any source in violation of any effluent standard or prohibition or pretreatment standard promulgated under Section 307(b) of the Act, 33 U.S.C. § 1317(b).
6. CWA Section 307(b), 33 U.S.C. § 1317(b), required EPA to promulgate regulations which are codified at 40 C.F.R. Part 403, entitled General Pretreatment Regulations.
7. 40 C.F.R. § 403.3(q) (Publicly Owned Treatment Works), defines a POTW to mean a treatment works as defined by CWA Section 212, 33 U.S.C. § 1292, which is owned by a State or municipality, including any devices, methods, and /or systems that, at a minimum, store, treat, or dispose of municipal or industrial wastes, including waste in combined storm water and sanitary sewer systems.
8. 40 C.F.R. § 403.3(f) (Control Authority), defines a Control Authority, in relevant part, to mean either EPA, the State, or the POTW if the POTW's Pretreatment Program Submission has been approved in accordance with the requirements of 40 C.F.R. § 403.11.
9. 40 C.F.R. § 403.3(j) (Industrial User), defines an industrial user as a source of Indirect Discharge, which in turn is defined at 40 C.F.R. § 403.3(i) to mean the introduction of pollutants into a POTW from any non-domestic source regulated under CWA §§ 307(b), (c), or (d), 33 U.S.C. § 1317(b), (c), or (d).
10. 40 C.F.R. § 403.3(v)(ii) (Significant Industrial User), defines a significant industrial user as one designated as such by the Control Authority, because they have a reasonable potential for adversely impacting the POTW's operations.
11. 40 C.F.R. § 403.5(d) (local limits), provides that where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with the General Pretreatment Regulations at 40 C.F.R. § 403.5(c), such local limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the CWA.
12. On September 22, 1989, EPA approved the State of California's pretreatment program administered by the Regional Water Quality Control Board (RWQCB). 54 Fed. Reg. 40664 (Oct. 3, 1989). On January 29, 2004, the Los Angeles RWQCB approved the City of Oxnard's (City) current Pretreatment Program.
13. As part of its Pretreatment Program, the City established local limits for pH (between 6-10) and total suspended solids (1000 mg/L), enacted by resolution on December 14, 1999. Such limits are set forth in Chapter 19, Article I, §§ 19-15(B), 19-26(A) of the Oxnard City Code.
14. Pursuant to CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19.4, the EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$187,500 in total, against a person for violations of CWA Section § 307 that occurred between December 6, 2013 and November 2, 2015. For violations that

occurred after November 2, 2015, the EPA may assess a penalty up to \$21,393 per day of violation, not to exceed \$267,415 in total.

III. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

15. Respondent is a New York corporation and therefore a person within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5). Respondent operates a wine producing facility located at 3201 Camino Del Sol in Oxnard, California, hereinafter “Facility.”
16. The City of Oxnard owns and operates a POTW for the purpose of treating industrial and domestic wastewater. At all times relevant to this matter, Respondent discharged industrial wastewater to the POTW operated by the City of Oxnard and is therefore an “industrial user” as defined by 40 C.F.R. § 403(3)(j).
17. Respondent’s industrial waste is a “pollutant,” as defined by CWA § 502(6).
18. Respondent has been engaged in producing wine at the Facility since at least 2005, a date best known to Respondent. The City designated the Respondent a “significant industrial user” pursuant to 40 C.F.R. § 403.3(v)(ii).
19. EPA inspected the Facility on February 10, 2015, and observed the wine making process and its wastewater treatment system. During a records review, EPA discovered multiple violations of the City’s local limits for pH and TSS.
20. Respondent failed to meet the City’s local limits for pH and Total Suspended Solids (TSS) on 10 occasions between August 2014 and June 2015.
21. Pursuant to the terms of an Administrative Order on Consent (Docket No. CWA-309(a)-16-003) in April 2017, Respondent completed installation of a new wastewater recycling system in order to achieve consistent compliance with its pretreatment requirements.

IV. ALLEGED VIOLATIONS

22. Between August 2014 and June 2015, Respondent violated CWA Section 307(d), 33 U.S.C. § 1317(d) on at least ten (10) days by operating a source in violation of pretreatment standards established pursuant to Section 307(b) of the Act, 33 U.S.C. § 1317(b).

V. ADMINISTRATIVE PENALTY

23. In consideration of the penalty factors of CWA Section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States a civil administrative penalty in the amount of \$70,000 within thirty (30) calendar days of the Effective Date, as defined in Section X below, of this CA/FO.

24. Respondent shall make penalty payment by one of the options listed below:

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service Mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO BOX 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to the EPA shall be made through the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the Fedwire message should read: D 68010727
Environmental Protection Agency)

d. Online Payment: This payment option can be accessed from the information below

Go to www.pay.gov
Enter "SFO Form Number 1.1." in the search field

Open "EPA Miscellaneous Payments – Cincinnati Finance Center" form and complete required fields

Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. If clarification regarding a particular method of payment is needed, contact the EPA Cincinnati Finance Center at (513) 487-2091.

25. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment: (i) Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number; (ii) the EPA case docket number; (iii) the EPA contact person; and (iv) the reason for payment.
26. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

James Polek
Wastewater Enforcement Section (ENF-3-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

27. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state, or local taxes.
28. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

29. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Action or

inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

30. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of the complaint;
 - b. neither admits nor denies specific factual allegations contained in the complaint;
 - c. consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section V above;
 - d. waives any right to contest the allegations set forth in this CA/FO; and
 - e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

31. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
32. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ATTORNEY FEES AND COSTS

33. Unless otherwise specified, each party shall bear its own attorney fees and costs.

X. EFFECTIVE DATE AND TERMINATION

34. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondent has complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

35. Pursuant to CWA Section 309(g)(4), 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.
36. Pursuant to CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

Clare Lombardi

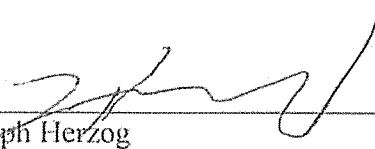
6-13-2018

for

Kathleen H. Johnson
Director
Enforcement Division

Date

For Respondent Royal Wine Corporation d/b/a/ Royal Kedem.



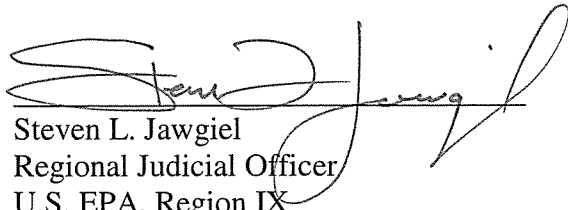
Joseph Herzog
Partner

5/14/2018

Date

FINAL ORDER

It is Hereby Ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2018-0004) be entered and that Respondent shall pay a civil penalty in the amount of \$70,000 in accordance with the terms of this Consent Agreement and Final Order.


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

Date: 08/14/18

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the attached Consent Agreement and Final Order in the matter of Royal Wine Corporation d/b/a Royal Kedem (Herzog Wine Cellars) has been filed with the Regional Hearing Clerk, Region IX, and that copies have been sent by Certified Mail, Return Receipt Requested, to:

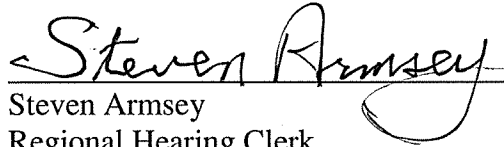
Mr. Joseph Herzog
Partner
Herzog Wine Cellars
3201 Camino Del Sol
Oxnard, CA 93030

Certified Mail No. 7016 1370 0000 2235 0049

I hereby certify that a copy of the Consent Agreement and Final Order in the matter of Royal Wine Corporation d/b/a Royal Kedem (Herzog Wine Cellars) was delivered to the following Agency Attorney:

Julia Jackson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Aug. 15, 2018
Date



Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street, 12th Floor (ORC)
San Francisco, CA 94105