

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

2019 JUL 24 PM 4:07

11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2019-0005  
Seward Turkey Enterprises, Inc., )  
) CONSENT AGREEMENT AND  
Respondent. ) FINAL ORDER  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**PRELIMINARY STATEMENT**

1. This proceeding for the assessment of a civil penalty was initiated on or about May 7, 2019, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency ("Complainant" or "EPA") issued to Seward Turkey Enterprises, Inc. ("Respondent"), a Complaint and Notice of Opportunity for Hearing.

2. The Complaint alleged that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and the regulations promulgated thereunder. The Complaint proposed a civil penalty of \$115,000. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order ("CA/FO") is the result of those negotiations.

**CONSENT AGREEMENT**

3. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

4. Respondent neither admits nor denies the factual allegations contained in the Complaint referenced above.

5. Respondent consents to the assessment of a civil penalty as stated below, to the conditions specified in this Consent Agreement, and to the issuance of the Final Order.

6. Respondent waives any right to contest the allegations and any right to appeal the proposed Final Order accompanying this Consent Agreement.

**Penalty Payment**

IT IS HEREBY AGREED BY THE PARTIES, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

7. Respondent consents to the payment of a civil penalty of \$45,000. Payment is due within thirty (30) days of the effective date of this CA/FO.

8. Such payment shall identify Respondent by name and docket number and shall be certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

9. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Shane McCoin  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

10. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

11. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

12. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

13. Respondent agrees that a failure to submit the penalty payment by the due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

#### **Effect of Settlement and Reservation of Rights**

14. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.

15. Respondent certifies by the signing of this Consent Agreement that, to the best of its knowledge and belief, it is presently in compliance with all requirements of the CWA and its implementing regulations. The effect of the settlement described above is conditioned upon the accuracy of this certification.

16. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

17. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

18. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties, and punitive damages.

#### **General Provisions**

19. Respondent and Complainant each agree to bear their own costs and attorneys' fees.

20. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

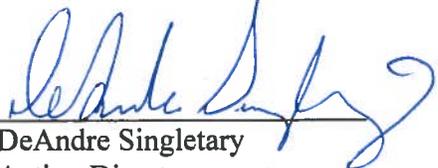
21. This CA/FO shall apply to and be binding upon Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

22. This CA/FO shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

23. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, on May 22, 2019, EPA provided notice on a proposed administrative penalty assessment in this matter. The public comment period ended on June 21, 2019. No comments were received.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
DeAndre Singletary  
Acting Director  
Enforcement and Compliance Assurance Division

7-23-19  
Date

  
Shane McCain  
Attorney Advisor  
Office of Regional Counsel

7/23/19  
Date

RESPONDENT:

SEWARD TURKEY ENTERPRISES, INC.

Scott Felber  
Printed Name

  
Signature

7-16-19  
Date

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

July 24, 2019  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

**Via Email**

Shane McCoin  
Attorney for Complainant  
[mccoin.shane@epa.gov](mailto:mccoin.shane@epa.gov)

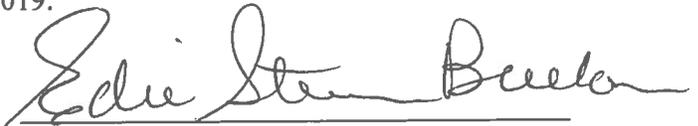
Thomas E. Jeffers  
Attorney for Respondent  
[tej@crosbylawfirm.com](mailto:tej@crosbylawfirm.com)

**Via First Class Mail**

Mr. Craig Wittstruck  
Registered Agent  
Seward Turkey Enterprises, Inc.  
1630 K Street  
Lincoln, Nebraska 68508

Cay Ewoldt  
Supervisor, Agricultural Section  
Water Quality Division  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
PO Box 98922  
Lincoln, Nebraska 68508

Dated this 25<sup>th</sup> day of July, 2019.

  
Signed  
for Lisa Haugen  
Region 7 Hearing Clerk