



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

January 27, 2023 @ 12:55 pm
USEPA – Region II
Regional Hearing Clerk

January 23, 2023
CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Article Number: 7019 1640 0000 0988 2085

Mayer Hirsch, President
Kiryas Joel Poultry Processing Plant
7 Dinev Court
Kiryas Joel, NY 10950

Re: Notice of Proposed Assessment of a Civil Penalty
In the Matter of: Kiryas Joel Poultry Processing Plant
Docket No. CWA-02-2023-3305

Dear Mr. Hirsch:

Enclosed is an Administrative Complaint (“Complaint”) which the U.S. Environmental Protection Agency (“EPA”) is issuing to you as a result of our determination that Kiryas Joel Poultry Processing Plant, located at 7 Dinev Court, Kiryas Joel, NY 10950, has failed to comply with Sections 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311, 1342. This Complaint is filed pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of \$29,000 be assessed against Kiryas Joel Poultry for this violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor (Room 1631)
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings. Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the Proposed CROP, including Subpart I thereof.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Lauren Fischer, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Fischer.Lauren@epa.gov

Offer of Settlement

In an effort to promptly settle this matter, we are enclosing, for your consideration, a proposed Consent Agreement and Final Order (“CA/FO”). If, at the close of the public comment period on the Complaint, no adverse public comments are received and no information contrary to the information set forth in the Complaint comes to our attention in any other fashion, we would be prepared to enter into a CA/FO on the terms enclosed. Under the terms of the CA/FO you would be obligated to pay a penalty of **\$21,000** in accordance with the terms of the CA/FO. **If you wish to resolve this matter without further proceedings, please sign the enclosed CA/FO and return it to EPA within twenty-five (25) calendar days of your receipt of this letter. Do not submit payment to EPA until after you receive an executed CA/FO.** If we do not receive the CA/FO, signed by you or your authorized representative, within this twenty-five (25) day period, our offer of settlement is withdrawn and we will thereafter seek the full amount of the penalty proposed in the Complaint.

If you have any questions on the enclosed Consent Agreement and Final Order, please contact Lauren Fischer. We urge your prompt attention to this matter.

Sincerely,

Anderson, Kate
Digitally signed by
Anderson, Kate
Date: 2023.01.23
12:05:06 -05'00'

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures:

- Administrative Complaint
- Proposed Consent Agreement and Final Order
- Consolidated Rules of Practice (CROP)

- Small Business Information Sheet and SEC Notice

cc: Ed Hampston, Director, Bureau of Water Compliance programs, NYSDEC
Natalie Browne, NYSDEC Region 3
Manju Cherian, NYSDEC Region 3
Meni Bruk, KJ Poultry via email
Chaim Oberlander, KJ Poultry via email

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 Broadway
New York, NY 10007-1866

January 27, 2023 @ 12:55 pm
USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

Kiryas Joel Poultry Processing Plant
7 Dinev Court
Kiryas Joel, NY 10950

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**Administrative Complaint
Findings of Violation, Notice of Proposed
Assessment of a Civil Penalty, and Notice of
Opportunity to Request a Hearing**

**Proceeding to Assess Class I
Civil Penalty**

Docket No. CWA-02-2023-3305

I. PRELIMINARY STATEMENT

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Kiryas Joel Poultry Processing Plant (“Respondent”) for unauthorized discharges in violation of Sections 301 and 402 of the Act, which are enforceable pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d).

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

EPA maintains concurrent enforcement authority with authorized States for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association, or municipality.
4. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged to water.
6. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
7. “Navigable waters” are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, inter alia, waters which are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.
8. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any “facility or activity” subject to regulation under Section 402 of the CWA, 33 U.S.C. § 1342(a).
9. Section 308(a) of the Act, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: Maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p) sets forth the requirements for the discharges of stormwater.
11. The Administrator of EPA has promulgated regulations, 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
12. The terms “Permit”, “Industrial Stormwater Permit”, “Multi Sector General Stormwater Permit” or “MSGP” mean the NYSDEC SPDES MSGP for Stormwater Discharges Associated with Industrial

Activity. The current MSGP (GP-0-17-004), issued by the NYSDEC became effective on March 1, 2018, and expires on February 28, 2023.

13. Pursuant to 40 C.F.R. § 122.41(a), permittees must comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.
14. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$23,989 per violation, and not exceeding \$59,973.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW/FINDINGS OF VIOLATION

1. Kiryas Joel (“KJ”) Poultry Processing Plant (“Respondent” or “KJ Poultry”), a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), owns or operates a facility (“Facility”) located at 7 Dinev Court, Kiryas Joel, NY 10950, where it operates a poultry slaughtering plant. According to Respondent’s Wastewater Plant Stormwater Pollution Protection Plan Site Map, the area surrounding the Facility’s Wastewater Pretreatment Plant includes two stormwater catch basins that flow into stormwater outfall 002 that discharges to a tributary of the Ramapo River. See Attachment 1, Site Map. The Ramapo River flows into the Pompton River, to the Passaic River, then to Newark Bay, and ultimately to the Atlantic Ocean, which is currently used in interstate and foreign commerce, and is therefore a water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
2. Respondent submitted Notice of Intent (“NOI”) to NYSDEC to obtain MSGP coverage, and the Facility obtained coverage under the current MSGP (GP-0-17-004) under Permit ID No. NYR00E993 on or about June 27, 2018. The current MSGP will expire on February 28, 2023.
3. Respondent’s NOI for MSGP coverage states that the Facility operates under Standard Industrial Classification (“SIC”) 2015- Poultry Slaughtering and Processing. Based upon the SIC code, the Facility is regulated under Sector U of the MSGP (Food and Kindred Spirits) and 40 C.F.R. Sections 122.26(b)(14)(i)-(ix), (xi).
4. Part I.C. of the MSGP expressly provides that discharges from industrial activity that are mixed with sources of non-stormwater other than those expressly authorized under the MSGP are ineligible for coverage under the MSGP.
5. As described below, Respondent discharged process wastewater from its Equalization (“EQ”) tank and/or effluent pump station wet well located at the Facility’s Wastewater Pretreatment Plant [non-stormwater that is not expressly authorized under Part I.B.2 of the MSGP which cites 6 NYCRR - 1.2(a)(29)(vi)] into stormwater catch basins that flow into a tributary of the Ramapo River (as set forth in Paragraph 1 above).

May 9, 2022 Unauthorized Discharge

6. On May 9, 2022, EPA received videos of the EQ tank at Respondent's Wastewater Pretreatment Plant that show overflows, and also showed a portion of this overflow wastewater (which is untreated process wastewater) entering stormwater catch basins that, as set forth in Paragraph 1 above, flow into a tributary of the Ramapo River. (See Attachment 3, images from the video).
7. On May 9, 2022, EPA requested information about this event from KJ Poultry by email.
8. On May 9, 2022, KJ Poultry promptly responded to EPA's email request with documentation that explained that on Monday morning, May 9, 2022, an EQ tank overflow occurred due to a clogged pipe (floc tubes) associated with the Dissolved Air Flotation ("DAF") Unit.
9. On May 24, 2022, EPA sent a Request for Information ("RFI") letter pursuant to Section 308 of the CWA to KJ Poultry that requested, among other things, additional information pertaining to the EQ tank overflow.
10. By letter dated July 11, 2022, KJ Poultry responded to EPA's RFI. Among other things, the response included a Notice of Violation letter dated May 10, 2022, from the Village of KJ addressed to KJ Poultry stating that it had an illicit discharge from the EQ tank into the Village of KJ's MS4 (SPDES ID No. NYR20A496) (See Attachment 4, copy of Exhibit C to KJ Poultry's RFI Response).

September 20, 2022 Unauthorized Discharge

11. On September 20, 2022, EPA received video clips by email that showed discharges occurring that day of pre-treated process wastewater from KJ Poultry's effluent pump station wet well into one of the stormwater catch basins that flows by a pipe into a tributary of the Ramapo River. (Attachment 2, IMG 1648)
12. On September 23, 2022, EPA sent an email to KJ Poultry requesting information about the process wastewater discharge described in the paragraph above.
13. On October 4, 2022, KJ Poultry responded to EPA's September 23, 2022, email and acknowledged the September 20, 2022, spill of pre-treated water from the effluent pump station wet well into the storm drain. (Attachment 5)
14. On October 20, 2022, the NYSDEC issued a Notice of Violation ("NOV") to KJ Poultry. The NOV stated that the NYSDEC was responding to a complaint from September 20, 2022, and had found evidence that poultry plant waste was discharged into a catch basin that discharges to a tributary of the Ramapo River. The NOV further states that "[p]oultry waste was present in the receiving water at the time of the inspection." (Attachment 6)
15. For the reasons stated above, EPA finds that KJ Poultry has discharged process wastewater, a pollutant, from its Facility to the Village of KJ MS4 and ultimately into waters of the United States, on May 9, 2022 and September 20, 2022, without a permit, in violation of Section 301 of the Act.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a penalty of **\$29,000**. EPA determined the proposed penalty after taking into account the applicable factors identified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Maples.Karen@epa.gov

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R.

§ 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lauren Fischer, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Fischer.Lauren@epa.gov

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$29,000**, within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted in Section V above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2023-3305

Wire transfers should be directed to the Federal Reserve Bank of New York

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".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Maples.Karen@epa.gov

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lauren Fischer, Esq., Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Fischer.Lauren@epa.gov

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 23rd DAY OF January, 2023.

Anderson, K
ate

Digitally signed by
Anderson, Kate
Date: 2023.01.23
12:05:52 -05'00'

For

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866**

IN THE MATTER OF:

Kiryas Joel Poultry Processing Plant
7 Dinev Court
Kiryas Joel, NY 10950

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. CWA-02-2023-3305

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency Region 2 (“EPA” or “Complainant”) and Kiryas Joel Poultry Processing Plant (“Respondent”)(together referred to as “the Parties”), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. The following Procedural and Factual Findings are made pursuant to the authority vested in the Administrator of the EPA by the Clean Water Act, 33 U.S.C. § 1251 *et. seq.* (“Act”), which authority has been duly delegated to the Regional Administrator of EPA Region 2, and since further re-delegated to the Director, Enforcement and Compliance Assurance Division, EPA Region 2.
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.
3. EPA initiated this proceeding to achieve compliance with the Act pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A).

4. The Complaint alleges violations of Section 301 of the Act, 33 U.S.C. §1311, for unauthorized discharges of process wastewater on May 9, 2022, and September 20, 2022, to catch basins that discharge via point sources to a tributary of the Ramapo River, a water of the United States, that were not authorized by the MSGP, from Respondent's Pretreatment facility located at 7 Dinev Court, Kiryas Joel, NY 10950. Respondent operates, among other things, poultry processing operations.
5. This action was public noticed between _____ and _____. No comments were filed.
6. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
8. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this CA/FO.
9. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. CONSENT AGREEMENT

1. The Paragraphs above are re-alleged and incorporated herein by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.

Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

A. SETTLEMENT TERMS

3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of this CA/FO and neither admits nor denies the factual allegations contained herein.
4. Respondent further waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO.
5. Respondent consents to the payment of the civil penalty in the amount of **\$21,000** as stated in the Payment of Civil Penalty Section below.

B. PAYMENT OF CIVIL PENALTY

6. Respondent shall pay a civil penalty in the amount of **\$21,000** to the “Treasurer of the United States of America.”
7. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender’s bank. The checks (cashier’s or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information	
Debit and Credit Card Payments	https://www.pay.gov/paygov/	
Checks from U.S. Banks Finance Center Contacts: Craig Steffen (513-487-2091)	U.S. Postal Service	UPS, Federal Express, or Overnight Mail
	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197- 9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001	
Wire Transfers (any currency) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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”	
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737	

ON LINE PAYMENT:

There is now an On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Doughlas McKenna, Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2
Mckenna.Douglas@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

8. The payment must be received at the above addresses on or before forty-five (45) calendar days after the effective date hereof, set out below (the date by which payment must be received shall hereafter be referred to as the “due date”). The “File Date” is the day on which this CA/FO is filed with the Regional Hearing Clerk.
9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
10. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
11. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys’ fees and costs for collection proceedings in connection with nonpayment.
12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent’s federal or State of New York taxes.

C. GENERAL PROVISIONS

13. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
14. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
15. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
16. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Act for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
17. Each undersigned representative of the Parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO to execute and legally bind that party to it.
18. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

For Respondent: Kiryas Joel Poultry Processing hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: _____
Mayer Hirsch, President
Kiryas Joel Poultry Processing
7 Dinev Court
Kiryas Joel, NY 10950

DATE: _____

For the Complainant, the United States Environmental Protection Agency:

BY: _____
Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007-1866

DATE: _____

IV. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) and having further re-delegated such authority to the Director of Enforcement and Compliance Assurance Division, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: _____

Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway – 21st Floor
New York, New York, 10007-1866