UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	Proceeding to Assess Class I Administrative Penalty Under Section 309(g) of the Clean Water Act
Perdue Foods LLC 255 Rehoboth Boulevard Milford, DE 19963	Docket No. CWA-03-2018-0134
Respondent	**CONSENT AGREEMENT AND FINAL ORDER**

I. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act), 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 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and Perdue Foods LLC, ("Respondent" or "Perdue"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R.§ 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of administrative penalties against any person who violates the CWA

may be liable for an administrative penalty in an amount not to exceed $10,000 per day for each day of violation, up to a total penalty amount of $25,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), any person who has violated the CWA after January 12, 2009 is liable for an administrative penalty not to exceed $16,000 per day for each day of violation up to a total penalty amount of $37,500 for violations that occurred between April 23, 2015 and May 12, 2015.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

II. EPA'S FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

10. At all times relevant to this Complaint, Respondent has owned and/or operated a poultry processing facility ("Facility") located at 255 Rehoboth Boulevard, Milford, DE. The industrial activity conducted at the Facility falls within SIC Code 2015.

11. The Facility is a point source as that term is defined in 40 C.F.R. § 122.26(b)(8).

12. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

13. The industrial activity conducted by the Respondent at the Facility is eligible for coverage under the Delaware National Pollutant Discharge Elimination System Industrial Stormwater General Permit ("ISWGP"). At all times relevant hereto, Respondent was a permittee under the ISWGP.

14. On April 23, 2015, as a result of mechanical failures, the Facility experienced a discharge of untreated wastewater, referred to as "red water" by Respondent. According to Respondent, the "red water" was cooling water that had come into direct contact with poultry during processing and contained bloody water, fat and offal. The constituents of the "red water" are "pollutants" as that term is defined in Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).

15. Between 1,200 and 1,500 gallons of red water entered a stormwater drain at the Facility and discharged into a nearby unnamed creek, which drains to the Mispillion River. The unnamed creek is a "Waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

16. According to Perdue, it immediately reported the discharge, took corrective action to contain and clean up the discharge, repaired and/or replaced the failed equipment and instituted procedures to minimize the chance of a recurrence.

Discharge Without a Permit

17. Section 9.1.1.3 of the ISWGP identifies specific categories of discharges that are not permitted, including:

"Discharges of floatable debris, oils, scum, foam or grease in other than trace amounts", (Section 9.1.1.3.4.2);

"Discharges that cause or contribute to degradation or loss of State designated beneficial uses of receiving waters and violation of State water quality standards", (Section 9.1.1.3.4.3); and

"Discharges of materials other than storm water", (Section 9.1.1.3.4.5).

18. The red water discharge was a prohibited discharge pursuant to Sections 9.1.1.3.4.2; 9.1.1.3.4.3; and 9.1.1.3.4.5 of the ISWGP.

19. Respondent's Discharges of pollutants from its Facility on April 23, 2015, to Waters of the United States constitutes an unpermitted discharge which is a violation of Section 301 of the Act.

Violation of the ISWGP

20. Section 9.1.5 of the ISWGP requires that the Respondent establish and implement a Storm Water Plan (SWP) for the Facility. The SWP is incorporated into the ISWGP and is an enforceable part of the ISWGP.

21. Section 9.1.5.7.3 of the ISWGP requires that "the SWP shall identify the practices/programs used to define the ongoing maintenance and clean-up, as appropriate, of areas which may contribute pollutants to storm water discharges." Good Housekeeping practices, as defined by the ISWGP "means the maintenance of an orderly work environment in order to minimize material losses and prevent unnecessary waste generation through routine procedures. Good housekeeping practices must include measures to eliminate or reduce the exposure of garbage and refuse materials to precipitation or runoff to their disposal. Typical good housekeeping practices include activities that are performed on a daily basis by employees during the course of normal work activities."

22. On May 12, 2015, representatives of the Delaware Department of Natural Resource and Environmental Conservation- Surface Water Discharge Section (DNREC) conducted an inspection of the Facility. During the inspection, DNREC observed, among other concerns, that the live hold shed, the secondary containment area, the fueling/scale areas and the parking lot were not kept clean, allowing for the potential for stormwater exposure to industrial material wastes.

23. The conditions observed and documented by DNREC during its inspection constitute inadequate good housekeeping measures, are violations of the good housekeeping requirements of the ISWGP and the facility's SWP, and are therefore violations of Sections 301 and 402 of the CWA.

III. GENERAL PROVISIONS

24. For the purpose of this proceeding:

a. Respondent admits the jurisdictional allegations set forth in this CAFO;

b. Except as provided in Paragraph 24.a. above, Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO;

c. Respondent agrees to undertake all actions required by this Consent Agreement and Final Order;

d. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal this Consent Agreement and Final Order;

25. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Agreement and Final Order.

26. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this Consent Agreement and Final Order without adjudication.

27. Respondent shall bear its own costs and attorney fees.

28. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

29. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this Consent Agreement and Final Order is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

30. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of **ten thousand five hundred dollars ($10,500)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

31. The civil penalty amount set forth in Paragraph 30, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

32. Respondent shall pay the civil penalty amount described in Paragraph 30, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 32 through 36 of this Order, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:

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"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www2.epa.gov/financial/makepayment

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Andrew Duchovnay
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

34. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

35. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

36. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

37. The penalty specified in Paragraph 30 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

38. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

39. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response

to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

40. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

41. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

42. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

43. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT

44. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties,

covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT, PERDUE FOODS LLC:

By: _____

Name: Roderick H Flagg

Title: Vice President Fresh Poultry

Date: 08/20/2018

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SO ORDERED:

Catherine A. Libertz

Catherine Libertz, Director
Water Protection Division
U.S. Environmental Protection Agency

8-25-2018

Date

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
Perdue Foods LLC **255 Rehobeth Boulevard** **Milford, DE 19963**	**EPA Docket No. CWA-03-2018-0134**
Respondent.	**Proceeding under Section 309(g) of the Clean Water Act**

FINAL ORDER

Complainant, Acting Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Pennsylvania Department of Transportation, have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of Ten Thousand Five Hundred dollars ($10,500), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

_____
Date

_____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III