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

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EPA REGION III, PHILA. PA

In the Matter of: Kunzler & Company, Inc. 652 Manor Street Lancaster, Pennsylvania 17604 Respondent	Class II Proceeding Under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B) Docket No. CWA-03-2014-0038 CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and Kunzler & Company, Inc. ("Kunzler" or "Respondent") pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and 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 ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. The Respondent is an "Industrial User" or "IU" as that term is defined at 40 C.F.R. 403.3(j).

3. Complainant alleges that Respondent discharged pollutants into a Publically Owned Treatment Works ("POTW") operated by the City of Lancaster ("Lancaster"), in exceedance of effluent discharge limits contained in Industrial Wastewater Discharge ("IWD") Permit No. 1016, (the "Permit"), issued to Respondent and made effective on August 10, 2004, and reissued on August 10, 2009. The Permit was issued by Lancaster pursuant to Sections 307 and 402 of the CWA, 33 U.S.C. §§ 1317, 1342.

4. Discharge of effluent in violation of any effluent standard, prohibition or pretreatment standard, including any standard contained in a pretreatment permit issued to an Industrial User, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits, among other things, the discharge of any pollutant in violation of a pretreatment permit issued under Section 307 of the Act, 33 U.S.C. § 1317, and 40 C.F.R. Parts 122 and 403.

5. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated Section 301(a) of the CWA by failing to obtain an NPDES permit or by discharging a pollutant into a water of the United States without an NPDES permit issued pursuant to Section 402 in an amount not to exceed $ 16,000 per day for each violation, up to a total penalty amount of $177,500.

6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 to include "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

7. Lancaster is an entity within the Commonwealth of Pennsylvania that is authorized to issue pretreatment permits to IUs discharging to the Lancaster POTW. EPA maintains concurrent enforcement authority with POTWs that are authorized to issue IWD permits to IUs to address violations of the CWA, including of IWD permits.

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

8. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

9. At all times relevant to this CAFO, Respondent owned and operated a processed meat products production facility located at 652 Manor Street in Lancaster, Pennsylvania (the "Facility").

10. Respondent's IWD permit contained discharge limits for pH and other constituents based on categorical pretreatment standards promulgated by EPA pursuant to 40 C.F.R. 403.6 (found at 40 C.F.R. Part 461) and local limits promulgated by Lancaster pursuant to 40 C.F.R. 403.5(c).

11. Between March 2008 and December 2012, Respondent exceeded the pretreatment standards contained in the Permit for pH for at least 21 months.

12. During that time period, Lancaster issued at least 3 separate notices of violation ("NOV") to Respondent for violations of pretreatment standards contained in the Permit for pH.

13. On February 28, 2013, EPA issued an information request to Respondent ("Information Request") pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to which Respondent timely responded.

14. Responses to the Information Request confirmed Respondent's numerous violations of the Permit.

15. At all times relevant to this action, it was unlawful under Section 301(a) of the CWA, 33. U.S.C. § 1311(a), for any person to discharge a pollutant from a point source to a POTW in violation of its permit issued by the POTW pursuant to Section 307 of the CWA, 33 U.S.C. § 1317.

16. Respondent's violation of the Permit constitute violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed $16,000 per day for each violation, up to a total penalty amount of $177,500.

III. CONSENT AGREEMENT AND FINAL ORDER

17. In order to resolve the violations described in Section II above, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein.

18. Respondent neither admits nor denies the factual allegations or conclusions of law contained in Section II, Findings of Fact, Jurisdictional Allegations and Conclusions of Law. Respondent admits the jurisdictional allegations contained in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

19. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), on any issue of law or fact in this matter and consents to issuance

of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B).

20. Each party to this action shall pay its own costs and attorney fees.

21. The provisions of this CAFO shall be binding upon Respondent and its officers, principals, directors, successors and assigns.

22. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

23. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), 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. In addition, EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.

24. Based on the foregoing findings, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA AND RESPONDENT HEREBY AGREE:

25. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay a civil penalty of **$40,000** for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications.

    a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, or ACH, and delivered as follows:

        i. If by money order, cashier's or certified check sent by U.S. postal service mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

Contact: 314 418 4087

ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-4807

iii. If by wire transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

iv. If by ACH (also known as REX or remittance express):

PNC Bank
ABA: 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 – checking
808 17th Street, NW
Washington DC 20074
Finance Center Contact: Jesse White: 301-887-6548

b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

and

Mr. Mark Bolender
Assistant Regional Counsel (3RC20)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

c. A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.

26. Failure to pay the penalty assessed by this CAFO after its effective date subjects Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a $15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30 day period after the payment is due and an additional $15.00 for each subsequent 30 days the penalty remains due.

27. All notifications and approvals required by this CAFO, shall be made to:

Mr. Mark Bolender
Assistant Regional Counsel (3RC20)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-2472

28. All submissions provided pursuant to this CAFO shall be signed by Respondent and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

IV. GENERAL PROVISIONS

29. 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. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

30. 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 an 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 there under, 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.

31. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

32. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

33. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondent's operational changes that Respondent contends will ensure compliance with the Permit. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

34. 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.

35. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

36. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA, and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT, Kunzler & Company, Inc.:

By: John M Young

Name: John M. Young

Title: C.F.O.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Jon Capacasa, Director
Water Protection Division

SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,

this 6 day of MARCH, 2014.

Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III