

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2025-0235
Tecumseh Poultry, LLC)	
)	COMPLAINT AND
Respondent)	CONSENT AGREEMENT
)	FINAL ORDER
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted 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), and 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"), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 ("EPA") and Respondent have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Consolidated Rules 22.13(b) and 22.18(b)(2) and (3), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated the terms and conditions set forth in its NPDES permits and, 33 U.S.C. §§ 1311, 1342.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant") with concurrence of the Regional Counsel.

5. Respondent is and was at all relevant times a domestic corporation under the laws of the state of Nebraska.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” to a “navigable water,” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater and requires, in part, that a discharge of stormwater associated with an industrial activity comply with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classifications (“SIC”) Code 1429. *See* 40 C.F.R. § 122.26(b)(14)(iii).

13. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with treatment processes of such treatment works, or which may contaminate sewage sludge.

14. “National Pretreatment Standard,” “Pretreatment Standard,” and “Standard” mean “any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the Act, which applies to Industrial Users.” 40 C.F.R. § 403.3(l).

15. “Pretreatment” means: the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or

alteration may be obtained by physical, chemical or biological processes, process changes or by other means . . . 40 C.F.R. § 403.3(s).

16. The National Pretreatment Standards establish general and specific prohibitions that “apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.” 40 C.F.R. § 403.5(a)-(b).

17. The National Pretreatment Standards define certain terms including:
- a. “User” and “Industrial User” mean “a source of Indirect Discharge,” 40 C.F.R. § 403.3(j);
 - b. “Indirect Discharge” and “Discharge” mean “the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the [Clean Water] Act,” 40 C.F.R. § 403.3(i); and
 - c. “POTW” means “a treatment works as defined by section 212 of the [Clean Water Act], which is owned by a State or a municipality,” 40 C.F.R. § 403.3(q).

18. “After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section [of the Clean Water Act], it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.” 33 U.S.C. § 1317(d).

19. Upon receiving authorization and approval under 33 U.S.C. § 1342(b), a state may establish its own Pretreatment Program and thereby assume responsibility for implementing the POTW Pretreatment Program requirements set forth in 40 C.F.R. § 403.8(f). *See* 40 C.F.R. § 403.10(e).

20. The Nebraska Department of Water, Environment and Energy (“DWEE”), formerly NDEE and NDEQ, is the state agency within the state of Nebraska that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

21. On November 7, 1984, EPA approved the state of Nebraska’s Pretreatment Program (NPP). DWEE has authority to seek civil and criminal penalties and injunctive relief for noncompliance with pretreatment requirements. 40 C.F.R. § 403.8(f)(1)(iv), (vi).

22. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Allegations

23. Respondent does business as Tecumseh Poultry, LLC and is incorporated in and doing business in the state of Nebraska.

24. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

25. At all times relevant for this action, Respondent is or was the owner and/or operator of the property located at 333 South Third Street, Tecumseh, Nebraska 68540 ("Facility"). The Facility operates under SIC 2015 which includes facilities engaged in poultry slaughtering and processing.

26. Snow melt, surface drainage, and runoff leave the Facility and discharge via four stormwater outfalls into the Big Nemaha River.

27. The Big Nemaha River is a traditional navigable water and is therefore a "navigable water" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

28. Stormwater from the Facility contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

29. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14) and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. Stormwater runoff from industrial activity at the Facility results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12), and requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

31. The DWEE issues and implements the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity.

32. Any individual seeking coverage under DWEE's General NPDES Permit for Storm Water Discharges Associated With Industrial Activity is required to submit a Notice of Intent ("NOI") to the DWEE, which Respondent submitted on November 23, 2022.

33. The principal requirement of the NPDES permit is for the owner and operator to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from industrial activities, describe and ensure the implementation of stormwater control measures, including best management practices ("BMPs"), that will be used to reduce the pollutants in stormwater discharge associated with the industrial activities at the Facility and to assure compliance with the terms and conditions of the permit.

34. From November 23, 2022, to March 31, 2027, the Facility is authorized under the General NPDES Permit for Storm Water Discharges Associated With Industrial Activity, NER920000, ("General Permit NER92").

35. The Facility is a poultry slaughter and chill facility that cleans poultry for processing at other facilities. Under the General Permit NER92 and the SWPPP, diesel loading/unloading, gasoline loading/unloading, carrying/unloading live poultry modules, cage wash water, peracetic acid storage, storage of trash in dumpsters, tractor trailer wheel

disinfecting, off trailer leakage, wastewater sludge loadout, and live poultry modules are covered.

36. Respondent has a pretreatment system that discharges process wastewater into the City of Tecumseh's publicly owned treatment works ("POTW") pursuant to Nebraska Pretreatment Permit No. NE-0111929 issued on July 1, 2023.

37. The City of Tecumseh, Nebraska is a "person" as defined by Section 502 of the Act, 33 U.S.C. § 1362(5), that owns and operates a POTW for the treatment of both domestic and industrial wastewater.

38. The City's POTW is a "point source" that "discharges pollutants" into the North Fork Big Nemaha River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12). The City's discharge of pollutants from its POTW requires a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

39. Effective January 1, 2022, NDEQ issued the City's POTW an NPDES permit (Permit No. NE0030911) that established the terms and conditions for authorized discharges to the Big Nemaha River.

40. Respondent discharges process wastewater from the Facility into the City's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(h).

41. Respondent's wastewater is a "pollutant," and contains "pollutants," as defined by Section 502(6) of the CWA.

42. Respondent's permit authorized only the discharge of poultry processing wastewater via Outfall 001 with numeric limits for Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), Ammonia, Oil and Grease, Total Kjeldahl Nitrogen and pH. These numeric limits were based on the design capacity of the City's POTW and therefore were intended to prevent interference and/or pass through at the POTW. Respondent's Permits also require monitoring and reporting of monitoring results to DWEE and the City by discharge monitoring reports ("DMRs").

43. In addition to the requirements of Respondent's permit, Respondent is also subject to the General Pretreatment Regulations at 40 C.F.R. Part 403.

44. On August 5 – 7, 2024, the EPA performed an inspection of the Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with the CWA. DWEE was present during the EPA Inspection.

45. During the EPA Inspection, the EPA inspector reviewed Respondent's available records related to General Permit NER92 and the NPDES permit issued under the Nebraska Pretreatment Program (NPP,) toured the Facility, photographed stormwater and pretreatment-related areas, and observed the Facility's outfalls and controls.

46. At the conclusion of the EPA Inspection, the EPA inspector issued Respondent a Notice of Potential Findings (“NOPF”).

EPA’s Allegations of Violation

Count 1

Violations of Respondent’s NPDES/NPP Permit

47. The paragraphs above are re-alleged and incorporated herein by reference.

48. Respondent’s NPP requires Respondent to submit daily monitoring reports (“DMRs”) to the City that includes monitoring results from samples taken at Outfall 001. During the EPA Inspection, the EPA discovered that Respondent had not been sending the City DMRs.

49. On May 1, 2023, Respondent violated the NPP by discharging wastewater into the POTW in excess of the numeric limits established for TSS.

50. On June 1, 2023, Respondent violated the NPP by discharging wastewater into the POTW in excess of the numeric limits established for BOD.

51. Respondent is therefore in violation of the NPP and 33 U.S.C. § 1317(d).

52. Each day of each illegal discharge of pollutants is a separate violation of 33 U.S.C. § 1317(d).

Count 2

Failure to Update SWPPP and/or Inadequate SWPPP

53. The paragraphs above are re-alleged and incorporated herein by reference.

54. Part 5.1 of the General Permit identifies all the required elements of a facility SWPPP which include but is not limited to: stormwater pollution prevention team, site description, summary of potential pollutant sources, and description of control measures.

55. Part 5.1.2 of the General Permit states that the SWPPP must include a site description which includes activities at the facility, a site map showing the site size, location of structural control measures, direction of stormwater flow, potential pollutant sources, stormwater inlets and outfalls, and locations of activities exposed to precipitation.

56. Part 5.1.4 of General Permit NER92 states that Respondent must document the location and type of control measures installed and implemented at the Facility to comply with the listed Parts of the General Permits.

57. Part 5.2 of the General Permit NER92 states that Respondent must modify the Facility's SWPPP when a triggering condition for corrective action in Part 3 of the General Permits occurs and that modification of the SWPPP must be made in accordance with the respective corrective action deadline in Part 3 of the General Permits.

58. Part 3.1.1 of General Permit NER92 states that if any of the listed conditions occur, Respondent must review and revise the selection, design, installation, and implementation of the control measures at the Facility to ensure the condition is eliminated and will not be repeated.

59. Part 3.1.3 of General Permit NER92 states that Respondent must document the discovery of any condition listed in the referenced portions of Part 3 within 24 hours of making the discovery and within 14 days of discovery document any corrective actions taken to eliminate or further investigate the deficiency or, if no corrective action is needed, the basis for that determination.

60. Part 3.3.2 of General Permit NER92 states that Respondent must document the listed items within the stated time from discovery of the condition listed in Part 3, submit the documentation to DWEE within 30 days of initial discovery of the condition, and retain a copy of the documentation with the SWPPP as required in Part 5.4.

61. Part 4.2 of General Permit NER92 states that Respondent must initiate corrective action procedures in accordance with Part 3 whenever visual assessments identify stormwater discharges containing coloration, clarity (diminished), floating solids, settled solids, odor, foam, oil sheen or other obvious signs of stormwater pollution.

62. During the February 14, 2023, quarterly visual assessments, Respondent identified coloration, clarity, floating solids, and, settled solids in the stormwater discharge, but failed to review and revise the selection, design, installation and implementation of the control measure at the Facility to ensure the condition is eliminated and will not be repeated or provide a basis for the determination that no corrective action is needed.

63. During the May 15, 2023, quarterly visual assessments, Respondent identified coloration, clarity, floating solids, and settled solids in the stormwater discharge, but failed to review and revise the selection, design, installation and implementation of the control measure at the Facility to ensure the condition is eliminated and will not be repeated or provide a basis for the determination that no corrective action is needed.

64. During the September 10, 2023, quarterly visual assessments, Respondent identified coloration in the stormwater discharge, but failed to review and revise the selection, design, installation and implementation of the control measure at the Facility to ensure the condition is eliminated and will not be repeated or provide a basis for the determination that no corrective action is needed.

65. During the December 15, 2023, quarterly visual assessments, Respondent identified coloration and floating solids in the stormwater discharge, but failed to review and revise the selection, design, installation and implementation of the control measure at the Facility to ensure the condition is eliminated and will not be repeated or provide a basis for the determination that no corrective action is needed.

66. During the March 14, 2024, quarterly visual assessments, Respondent identified coloration, and settled solids in the stormwater discharge, but failed to review and revise the selection, design, installation and implementation of the control measure at the Facility to ensure the condition is eliminated and will not be repeated or provide a basis for the determination that no corrective action is needed.

67. The Respondent failed to update the SWPPP to include the schedules and procedures for good housekeeping and maintenance, maintain an updated facility site map, and an updated pollution prevention team.

68. Based on the observations documented during the EPA Inspection, a review of information provided by Respondent and NDWEE, and other relevant information, EPA determined that the 2017 and 2023 SWPPPs were inadequate and/or Respondent failed to update and amend the 2017 and 2023 SWPPPs as required by Parts 3 and 5 of the General Permits.

69. Respondent's failure to develop an adequate and accurate SWPPP and/or to amend the SWPPPs are violations of the conditions or limitations of the General Permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to Conduct Quarterly Visual Assessment of Stormwater Discharges and/or Failure to Maintain Records

70. The paragraphs above are re-alleged and incorporated herein by reference.

71. Part 4.2.1 of General Permit NER92 states that once a quarter Respondent must collect a stormwater sample from each outfall, conduct a visual assessment of the samples and visually inspect the samples for the listed water quality characteristics.

72. Part 4.2.2 of General Permit NER92 states that Respondent must document the results of the visual assessments and maintain the documentation onsite with the SWPPP.

73. Part 7.3 of General Permit NER92 states that Respondent must retain copies of the SWPPP, reports, and monitoring data for at least three years from the date coverage under the permit expires or is terminated.

74. During the EPA Inspection, Respondent was unable to produce any visual assessment records for Outfalls 002-004 in 2024 and Outfall 004 for Quarter 4 of 2023.

75. Based on the EPA Inspection, and other relevant information, Respondent failed to conduct quarterly visual assessments of stormwater discharges and/or failed to maintain records of quarterly visual assessments as required by General Permit NER92.

76. Respondent's failure to conduct required visual assessments and/or maintain records of the quarterly visual assessments are violations of the conditions or limitations of the General Permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Conduct Quarterly pH sampling and/or Failure to Maintain Records

77. The paragraphs above are re-alleged and incorporated herein by reference.

78. Part 6.2.1 of General Permit NER92 states that Respondent must monitor stormwater discharges for pH, Total Suspended Solids, and Chemical Oxygen Demand (COD).

79. Based on the EPA Inspection, and other relevant information, Respondent failed to conduct pH monitoring and/or failed to maintain records of such monitoring as required by General Permit NER92.

80. Respondent's failure to conduct required pH sampling and/or maintain records of the pH sampling are violations of the conditions or limitations of the General Permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5

Failure to Maintain Good Housekeeping

81. The paragraphs above are re-alleged and incorporated herein by reference.

82. Part 1.1.3 of General Permit NER92 states that Respondent must minimize the potential for waste, garbage, and floatable debris to be discharged by keeping exposed areas free of such materials or by intercepting them before they are discharged.

83. During the EPA Inspection, the EPA inspector observed and documented a dried stormwater path consisting of feathers and other debris as well as uncovered dumpsters.

84. Respondent's failure to implement good housekeeping measures are violations of the conditions or limitations of the General Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Penalty

85. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred after November 2, 2015,

where penalties are assessed on or after December 27, 2023, Respondent is liable for civil penalties of up to \$26,685 per day for each day during which the violation continues, up to a maximum of \$333,552

CONSENT AGREEMENT

86. Respondent and the EPA agree to the terms of this Complaint and Consent Agreement/Final Order.

87. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Complaint and Consent Agreement/Final Order.

88. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Complaint and Consent Agreement/Final Order.

89. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Complaint and Consent Agreement/Final Order. By signing this consent agreement, Respondents waive any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

90. Respondent and the EPA agree to conciliate the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

91. Respondent consents to receive service of the filed Complaint and Consent Agreement/Final Order electronically at the following email address: bachigbu@bmakk.com.

92. The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

93. Respondent understands and agrees that this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

94. Respondent certifies by the signing of this Complaint and Consent Agreement/Final Order that Respondent is in compliance with the CWA.

Terms of Payment

95. Respondent agrees to pay a civil penalty in the amount of **Ninety-Six Thousand and Five Hundred and Six Dollars (\$96,506)** (“Assessed Penalty”) within thirty (30) calendar days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

96. Respondent shall pay the Assessed Penalty by using any payment method provided at <http://www.epa.gov/financial/makepayment>. For instructions for wire transfers and additional information, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

97. When making a payment, Respondent shall:

- a. Identify every payment with Respondent’s name and the docket number of this Agreement, CWA-07-2025.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
Via electronic mail to:
r7_hearing_clerk_filings@epa.gov;

Elizabeth Huston
Office of Regional Counsel
U.S. Environmental Protection Agency
Via electronic mail to:
Huston.liz@epa.gov; and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov.

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

98. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this

Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. **Interest.** Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) calendar days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) calendar days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. **Handling Charges.** The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. **Late Payment Penalty.** A twenty percent (20%) quarterly non-payment penalty.
- d. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:
 - i. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - ii. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - iii. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - iv. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

99. **Allocation of Payments.** Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

100. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent’s TIN within 5 days of Respondent’s issuance and receipt of the TIN.

Effect of Settlement and Reservation of Rights

101. Respondent’s payment of the entire civil penalty pursuant to this Complaint and Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

102. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Complaint and Consent Agreement/Final Order.

103. Nothing contained in this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

104. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Complaint and Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

105. With respect to matters not addressed in this Complaint and Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

106. The Parties acknowledge that this Complaint and Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

107. Pursuant to 40 C.F.R. § 22.31(b), this Complaint and Consent Agreement/Final Order shall be effective after signature by the authorized regional official and the date upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Complaint and Consent Agreement/Final Order.

108. The state of Nebraska has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

109. The headings in this Complaint and Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Complaint and Consent Agreement/Final Order.

110. Respondent and Complainant agree that this Complaint and Consent Agreement/Final Order may be signed electronically in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Elizabeth Huston
Office of Regional Counsel

For the Respondent:

Tecumseh Poultry, LLC


Signature

9/19/25
Date

Rick Anderson
Printed Name

President
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practicing 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.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent a true and correct copy of this signed Complaint and Consent Agreement/Final Order in the stated manner to the following:

Copy emailed to Respondent:

Tecumseh Poultry
333 S. 3rd Street
Tecumseh, Nebraska 68540

Copy emailed to representatives for Complainant:

Elizabeth Huston
EPA Region 7 Office of Regional Counsel
Huston.liz@epa.gov

Beckett Nichols
EPA Region 7 Enforcement and Compliance Assurance Division
Nichols.beckett@epa.gov

Copy emailed to DWEE:

Phillip Halsted
Nebraska Department of Environment and Energy
phillip.halsted@nebraska.gov

Date

Regional Hearing Clerk