

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

BEFORE THE ADMINISTRATOR

| | | |
|---|---|------------------------------|
| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2024-0128 |
| BMaKK Corporation |) | |
| |) | |
| Respondent |) | Consent Agreement and |
| |) | Final Order |
| Proceedings under Section 309(g) of the |) | |
| Clean Water Act, 33 U.S.C. § 1319(g) |) | |
| _____ |) | |

COMPLAINT

Preliminary Statement

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, BMaKK Corporation, 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 and Final Order serves as notice that the EPA has reason to believe that the Respondent has violated its National Pollutant Discharge Elimination System ("NPDES") permit promulgated issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Parties

4. The authority to act 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 by 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 an 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). SIC code 1429 includes establishments primarily engaged in mining or quarrying crushed and broken stone not elsewhere classified.

13. The Nebraska Department of Water, Energy, and Environment (“NDWEE”), formerly NDEE and/or 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.

14. 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 Factual Allegations

15. Respondent is a "person," as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
16. At all times relevant for this action, Respondent is or was the owner and/or operator of the property located at 1440 Read Street, Omaha, Nebraska 68112 ("Facility"). The Facility operates under SIC 1429.
17. The Missouri River flows along the north perimeter of the Facility, separated by a flood levee.
18. Snow melt, surface drainage, and runoff water leave the Facility and discharge into the Omaha Municipal Separate Storm Sewer System ("MS4") via five stormwater inlets. Four of the MS4 inlets are located along Read Street adjacent to the Facility (Outfalls 01, 02, 03, and 05) and one of the MS4 inlets is located inside the Facility where processed material is stored (Outfall 04).
19. Discharges that enter the MS4 flow into a stormwater detention basin and from the detention basin, discharges are pumped into Carter Lake or to the Missouri River.
20. Carter Lake is an oxbow lake that was created naturally after flooding of the Missouri River in 1877 cut off a bend of the Missouri River, forming Carter Lake.
21. Carter Lake borders Omaha, Nebraska and Carter Lake, Iowa, and forms part of the border between Iowa and Nebraska.
22. Carter Lake is identified as impaired by both Nebraska and Iowa and has a Total Maximum Daily Load ("TMDL") established. Nebraska aquatic life impairments include chlorophyll a, total nitrogen, and total phosphorus. Iowa impairments include pH for aquatic life and primary contact recreation and transparency for primary contact recreation. Carter Lake is 315 acres with a maximum depth of 25.4 feet and has significant recreational and aesthetic value to the surrounding communities with adjacent homes, golf course, parks, fishing, rowing competitions, canoeing, is identified as a Significant Publicly-Owned Lake by the Iowa Department of Natural Resources ("IDNR"), and has amenities for boating, including public boat ramps and private docks.
23. Carter Lake is an interstate water and 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).
24. The Missouri 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).

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

26. 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).

27. 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.

28. The NDWEE issues and implements the General NPDES Permit for Storm Water Discharges Associated with Industrial Activity.

29. From April 13, 2017, to September 28, 2022, the Facility was authorized under the General NPDES Permit for Storm Water Discharges Associated with Industrial Activity, NER910000 (“General Permit NER91”).

30. From December 21, 2023, 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”).

31. On October 5, 2023, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its NPDES permit and the CWA. During this inspection, EPA’s Inspector identified several violations of the Respondent’s NPDES permit and issued a Notice of Preliminary Findings (“NOPF”).

EPA’s Allegations of Violation

Count 1

Failure to Update SWPPP and/or Inadequate SWPPP

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

33. Part 5.1 of the General Permits 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.

34. Part 5.1.2 of the General Permits 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, MS4 discharge points, and locations of activities exposed to precipitation.

35. Part 5.1.4.1 of General Permit NER91 and Part 5.1.4 of General Permit NER92 state 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.

36. Part 5.2 of the General Permits 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.

37. Part 3.1 of General Permit NER91 and Part 3.1.1 of General Permit NER92 state 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.

38. Part 3.3 of General Permit NER 91 and Part 3.1.3 of General Permit NER92 state 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.

39. Part 3.4 of General Permit NER91 and Parts 3.3.1 and 3.3.2 of General Permit NER92 state that Respondent must document the listed items within the stated time from discovery of the condition listed in Part 3, submit the documentation to NDEE 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.

40. On or before April 10, 2021, Respondent began to store large amounts of waste concrete for processing on the 5.75-acre south section of the Facility but failed to update the 2023 SWPPP to include the Site changes.

41. The 2023 SWPPP failed to include, among other things, the following items:
- a. Accurate description of current control measures.
 - b. Current permit information.
 - c. Accurate and consistent outfall information throughout the SWPPP.
 - d. Fueling, oil, or storage areas where spills and leaks could discharge to a stormwater conveyance; and
 - e. Site map containing current site conditions and 5.75-acre storage area.

42. 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 Permits issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Conduct and/or Document Routine Facility Inspections

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

44. Part 4.1.1 of the General Permit NER92 states that Respondent must conduct routine facility inspections at least quarterly of all the listed areas of the Facility, including where industrial materials or activities are exposed to stormwater and of all stormwater control measures used to comply with the General Permits' effluent limits.

45. Part 4.1.2 of the General Permit NER92 states that Respondent must document the findings of each routine facility inspection performed and maintain the documentation onsite with the SWPPP as required in General Permits Part 5.4.

46. Part 7.4 of General Permit NER92 states that Respondent must retain copies of the SWPPP and reports for at least three years from the date that coverage under the General Permits expires or is terminated.

47. During the EPA Inspection and in response to the EPA Information Request, Respondent was unable to produce routine facility inspection records for December 2023 to March 2024.

48. Respondent's failure to conduct and/or document routine facility inspections 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 Implement Adequate Stormwater Controls

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

50. Part 2.1 of General Permit NER92 states that Respondent must select, design, install, and implement stormwater control measures in accordance with good engineering practices and manufacturer's specifications to minimize pollutant discharges.

51. During the EPA Inspection, no stormwater controls were present at Outfalls 01, 02, 03, and 05, and an overturned dumpster was used as a stormwater control for Outfall 04.

52. During an April 17, 2024, MS4 inspection, the city of Omaha observed and documented stormwater controls at the Facility for Outfall 04, but no stormwater controls at Outfalls 01, 02, 03, and 05. A large amount of grit debris around and within several MS4 inlets was also documented.

53. Respondent's failure to implement adequate stormwater controls 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 Benchmark Monitoring and/or Failure to Maintain Records of Benchmark Monitoring

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

55. Part 6 of the General Permit NER92 states that stormwater samples must be collected, analyzed, and documented consistent with the procedures described in Part 6 and any additional sector-specific requirements in Part 8.

56. Part 6.2.2.2 of General Permit NER92 state that benchmark monitoring must be conducted for all applicable parameters in the first four quarters in the first year of permit coverage, beginning in the first full quarter of permit coverage.

57. Part 7.2 of General Permit NER92 state that "all monitoring data collected pursuant to Parts 6.2 must be maintained with the SWPPP after you have received your complete laboratory results for all monitored outfalls for the reporting period."

58. Part 7.4 of General Permit NER92 state that Respondent must retain copies of the SWPPP, reports, and monitoring data for at least three years from the date coverage under the General Permits expire or are terminated.

59. Based on the EPA Inspection, Respondent's response to the EPA Information Request, and other relevant information, Respondent failed to conduct benchmark monitoring and/or failed to maintain records as required by the General Permit NER92 Parts 6 and 7 during the January to March 2024 and July to September 2024 quarters.

60. Respondent's failure to conduct benchmark monitoring and/or maintain records of benchmark monitoring are violations of the conditions or limitations of the General Permit NER92 issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

61. Respondent and the EPA agree to the terms of this Consent Agreement and Final Order.

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

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

64. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.

65. By signing this consent agreement, respondent waives 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.

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

67. Respondent consents to receive service of the filed Consent Agreement and Final Order electronically.

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

69. Respondent understands and agrees that this Consent Agreement and 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 and Final Order.

70. Respondent certifies by the signing of this Consent Agreement and Final Order that Respondent is in compliance with the Administrative Order for Compliance on Consent (Docket No. CWA-07-2024-0127).

71. 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, Respondent is liable for civil penalties of up to \$27,378 per day for each day during which the violation continues, up to a maximum of \$342,218.

72. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is **\$44,391**.

73. By signing this Order, Respondent certifies that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. In addition to this statement, Respondent has submitted a signed and certified statement to EPA of its current

financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship.

Penalty Payment

74. EPA has determined that based on Respondent's signed, certified statement to EPA as described in the paragraph above and EPA's best interests, the penalty for the violations may be paid in installments. Respondent agrees in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$44,391 plus a total interest of \$616.54 over a period of 6 months for a total payment of [penalty + interest] \$45,007.54. The total payment shall be paid in six (6) monthly payments of \$7,501.26. The first payment must be received electronically as described below within thirty (30) days of the effective date of the Final Order. Each subsequent payment shall be paid thirty (30) days after the previous payment.

Each penalty payment shall be made 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>.

75. When making each payment, Respondent shall:

- a. Identify every payment with Respondent's name (In the Matter of BMaKK Corporation) and the docket number of this Agreement, CWA-07-2024-0128.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof via email 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.

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

"Proof of payment" means, as applicable, a copy of 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.

76. 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.

77. 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.

78. 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 sherrer.dana@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

79. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement and 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 Consent Agreement and 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.

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

81. Nothing contained in this Consent Agreement and 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.

82. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement and 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.

83. With respect to matters not addressed in this Consent Agreement and 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

84. The Parties acknowledge that this Consent Agreement and 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.

85. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and 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 Consent Agreement and Final Order.

86. 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).

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

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

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

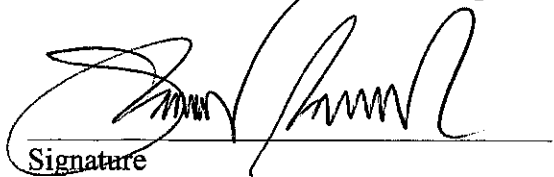
Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Kristina Gonzales
Office of Regional Counsel

For the Respondent, BMaKK Corporation:

 12/23/25
Signature Date

DR. BENNETT ACHIGBU
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 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 Consent Agreement and Final Order in the stated manner to the following:

Copy emailed to Respondent:

Bennett Achigbu
BMAKK Corporation, President
bachigbu@bmaKK.com

Nedu Igbokwe, Attorney
Banwo & Igbokwe Law Firm, LLC
nedu@bi-law.com

Copy emailed to representatives for Complainant:

Kristina Gonzales
EPA Region 7 Office of Regional Counsel
Gonzales.kristina@epa.gov

Erin Kleffner
EPA Region 7 Enforcement and Compliance Assurance Division
Kleffner.Erin@epa.gov

Carrie Venerable | N.E.W. Solutions
EPA Region 7 Office of Regional Counsel
Venerable.Carrie@epa.gov

Copy emailed to NDWEE:

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

Date

Signature