

PREET BHARARA
United States Attorney for the
Southern District of New York
By: TOMOKO ONOZAWA
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel.: (212) 637-2721
Fax: (212) 637-2686
tomoko.onozawa@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Plaintiff,

COMPLAINT

v.

14 Civ. _____

KIRYAS JOEL POULTRY PROCESSING
PLANT, INC., and KIRYAS JOEL MEAT MARKET
CORP.,

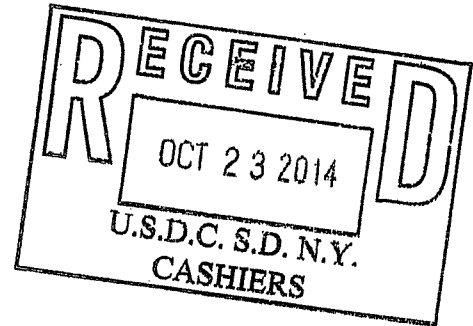
Defendants.
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1. The United States of America ("United States"), by the authority of the Attorney General of the United States, acting on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges for its complaint as follows:

NATURE OF THE ACTION

2. The United States brings this civil action to seek civil penalties for violations of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1251-1387, by defendants Kiryas Joel Poultry Processing Plant, Inc. ("KJ Poultry") and Kiryas Joel Meat Market Corporation ("KJ Meat Market") (collectively, "Defendants").

3. Defendants repeatedly violated the Act in connection with the operation of their poultry slaughtering plant by ultimately discharging and causing the discharge of pollutants to an



unnamed tributary of the Ramapo River in Orange County, New York ("Tributary No. 25"), and Highland Brook, which are waters of the United States. These pollutants were contained in wastewaters generated by, and stormwater related to, Defendants' poultry slaughtering operations, and included slaughtered chicken parts, salt, fats, oils, and greases.

4. More specifically, Defendants' violations included the following: First, Defendants discharged spills and overflows of untreated wastewater into storm drains and storm sewers that discharged to Highland Brook, and ultimately discharged to Tributary No. 25, in violation of Section 301 of the Act, 33 U.S.C. § 1311. Second, Defendants failed to obtain a stormwater permit pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and, therefore, discharged stormwater associated with industrial activities through storm drains that discharged to Highland Brook, and ultimately discharged to Tributary No. 25, again in violation of Section 301 of the Act, 33 U.S.C. § 1311. Third, Defendants discharged substantial volumes of untreated wastewater to the nearby Kiryas Joel publicly owned treatment works (the "KJ POTW"), which ultimately discharged to Tributary No. 25. These discharges of untreated and partially treated wastewater to the KJ POTW constituted violations of Section 307 of the Act, 33 U.S.C. § 1317, because they (a) interfered with the treatment processes or operations at the KJ POTW and (b) passed through the KJ POTW without treatment. These interferences and pass-throughs caused the KJ POTW to violate its own permit when it ultimately discharged wastewater to Tributary No. 25.

5. Accordingly, the United States seeks civil penalties for these violations, pursuant to Sections 301, 307 and 309 of the Act, 33 U.S.C. §§ 1311, 1317, 1319, and related regulations.

JURISDICTION, AUTHORITY, AND VENUE

6. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Sections 309(b), (d), and (f) of the Act, 33 U.S.C. §§ 1319(b), (d), (f), and 28 U.S.C. §§ 1331, 1345 and 1355.

7. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395, because Defendants are located and doing business in Orange County, New York, which is within the Southern District of New York.

8. Notice of the commencement of this action has been given to the State of New York pursuant to Section 309(b) and (f) of the Act, 33 U.S.C. § 1319(b), (f).

PARTIES

9. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of EPA.

10. Defendant KJ Poultry is a corporation organized under the laws of the State of New York, with its principal executive offices located at 51 Forest Road, Monroe, New York, 10950.

11. Defendant KJ Meat Market is a corporation organized under the laws of the State of New York, with its principal executive offices located at 51 Forest Road, Monroe, New York 10950.

12. KJ Poultry and KJ Meat Market are each "persons" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

STATUTORY AND REGULATORY BACKGROUND

I. Discharges of Pollutants and the NPDES Permitting Program

13. The Act was adopted to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

14. Section 301(a) of the Act furthers this goal by, among other things, prohibiting the “discharge of any pollutant by any person” to waters of the United States, except as permitted by the Act and the regulations thereunder. 33 U.S.C. § 1311(a). The “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

15. A “point source” is defined broadly as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

16. Section 402 of the Act authorizes EPA, under certain circumstances, to issue a National Pollutant Discharge Elimination System (“NPDES”) permit authorizing a person to discharge pollutants into waters of the United States. 33 U.S.C. § 1342(a).

17. The Act also authorizes states to establish their own permitting programs. 33 U.S.C. § 1342(b). After a state’s permitting program is approved by EPA, and subject to certain limitations, states may issue their own NPDES permits pursuant to such a program. New York State administers such an approved permitting program through the Department of Environmental Conservation (“NYDEC”), referred to as the State Pollutant Discharge Elimination System (“SPDES”) permit program. Under Sections 309 and 402(i) of the Act, the

United States retains concurrent authority to enforce SPDES permit violations. 33 U.S.C. §§ 1319, 1342(i).

II. Pretreatment Standards

18. As set forth in detail below, the Act and its implementing regulations also prohibit Defendants from discharging pollutants to publicly owned treatment works ("POTWs") at levels that violate pretreatment standards promulgated by EPA, including by interfering with, or passing through, the POTWs.

19. Industrial discharges to POTWs have historically been significant sources of pollutants in our Nation's waters. To prevent contamination and deterioration of water quality, wastewater resulting from industrial activity may be collected by sewer systems and treated at wastewater treatment plants, including POTWs, before being discharged to surface water or ground water. Furthermore, since most conventional wastewater treatment plants are not designed to treat all pollutants generated from industrial activity, industrial wastewater may also require pretreatment prior to entering the sewer systems.

20. Section 307(b) of the Act, 33 U.S.C. § 1317(b), requires EPA to promulgate federal standards for the pretreatment of wastewater discharged to POTWs. The relevant regulatory requirements governing pretreatment are set forth at 40 C.F.R. Part 403.

21. Section 307(d) of the Act, 33 U.S.C. § 1317(d), prohibits the owner or operator of any facility which discharges pollutants to a POTW from operating that facility in violation of any applicable Pretreatment Standards promulgated by EPA.

22. The regulations found at 40 C.F.R. § 403.5 establish "general prohibitions," among them that a "[u]ser may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference." "Pass Through" is a discharge "which exits the publicly owned

treatment work into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit." 40 C.F.R. § 403.3(p). "Interference" includes any discharge that inhibits or disrupts the treatment processes or operations of a POTW and that alone, or in conjunction with discharges from other sources, causes a violation of a POTW's NPDES permit. 40 C.F.R. § 403.3(k).

23. Local limits as defined by 40 C.F.R. § 403.5(d) and "Pretreatment Standards" for purposes of Section 307(b) of the Act, 33 U.S.C. § 1317(b), are pretreatment limits developed to protect a POTW from the introduction of pollutants at levels that cause Interference or Pass Through.

III. Stormwater Discharges

24. Section 402(p) of the Act, 33 U.S.C. § 1342(p), authorizes EPA to regulate stormwater discharges, directly or indirectly, to navigable waters. Section 402(p) and its implementing regulations prohibit Defendants from discharging stormwater associated with industrial activities into waters of the United States without a permit. Pursuant to Section 402(p), discharges to navigable waters of stormwater associated with industrial activity must conform to the requirements of a permit issued pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342.

25. Pursuant to Section 402(p) of the Act, on November 15, 1990, EPA promulgated regulations relating to the control of stormwater discharges, at 40 C.F.R. § 122.26.

26. Under 40 C.F.R. §§ 122.26(a)(1)(ii), (b)(14), and (c)(1), dischargers of stormwater associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Such dischargers include

facilities identified under Standard Industrial Classification (“SIC”) code 2015 (Poultry Slaughtering and Processing), among others. 40 C.F.R. § 122.26(b)(14)(xi).

27. At all times relevant to the complaint, the State of New York promulgated General Permit No. GP-0-06-002 for SPDES Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity (“Multi-Sector General Permit” or “MSGP”).

28. In order to be covered by the MSGP, and pursuant to the terms of the MSGP, a facility discharging stormwater associated with certain industrial activities must submit a Notice of Intent, prepare and implement a Stormwater Pollution Prevention Plan, prepare and implement Best Management Practices, conduct inspections, conduct monitoring, and meet other eligibility requirements.

IV. Civil Enforcement

29. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief when any person violates, among other things, Sections 301 or 307 of the Act, 33 U.S.C. §§ 1311, 1317.

30. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2641 note: Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note: Pub. L. 101-134, enacted April 26, 1996, 110 Stat. 1321), and as implemented by 61 Fed. Reg. 69,364 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 73,345 (Dec. 11, 2008), provides that any person who violates, among other things, Sections 301 (discharge without a permit, including stormwater), 307 (pretreatment), or 309(a) of the Act, 33 U.S.C. §§ 1311, 1317, 1319(a), shall be subject to a civil penalty of up to \$32,500

per day for each violation occurring after March 15, 2004, and up to \$37,500 per day for each violation occurring after January 12, 2009.

KJ POULTRY AND KJ MEAT MARKET OPERATIONS

31. Upon information and belief, KJ Poultry and KJ Meat Market own and/or operate a poultry slaughtering and processing plant located at 7 Dinev Court, Monroe, New York ("Main Building") and a wastewater pretreatment facility (the "Pretreatment Facility") located at 50 Bakertown Road (collectively, the "Poultry Plant").

32. At the Main Building, Defendants slaughter, process, package, and ship poultry and poultry products. Upon information and belief, the Poultry Plant slaughters approximately 30,000 chickens per day and approximately 1,500 turkeys once every two weeks. At all times relevant to the complaint, storm sewers in the loading dock area of the Main Building, as well as catch basins in the vicinity of the Main Building, discharged to the Kiryas Joel Municipal Separate Storm Sewer System, which ultimately discharged to Tributary No. 25, which is a tributary of the Ramapo River in Orange County, New York, and is designated as NJ-12-25 by the State of New York.

33. The Pretreatment Facility is located approximately 300 yards south of the Main Building. The Pretreatment Facility consists of one equalization tank, a small building housing a dissolved air flotation system, and a holding tank. There are four storm drains located in and around the Pretreatment Facility that lead to an outfall located on the north side of the Pretreatment Facility. The outfall discharges to Highland Brook, which in turn discharges to Tributary No. 25.

34. The Poultry Plant is classified as SIC 2015 (Poultry Slaughtering and Processing), which falls within Sector U (categorized as "Food and Kindred Products") of the Multi-Sector General Permit.

35. Defendants' industrial activities at the Poultry Plant produce wastewater containing food wastes and other "pollutants" within the meaning of 33 U.S.C. § 1362(6), including feathers, blood, animal grease, fats, salt and anatomical parts.

36. Wastewater from the Main Building is pumped to the equalization tank in the Pretreatment Facility. From there, the wastewater flows to the dissolved air flotation ("DAF") system. This process is designed to generate sludge which is removed and sent to the sludge holding tank(s), where it is stored and later hauled away by truck for off-site disposal. The wastewater from the DAF system then flows into a wet well, where it is subsequently pumped to the KJ POTW. The effluent from the KJ POTW discharges via a separate outfall to Highland Brook, which discharges to Tributary No. 25. The KJ POTW's effluent includes "pollutants," as that term is defined at 33 U.S.C. § 1362(6).

37. The KJ POTW is owned by the Village of Kiryas Joel. The KJ POTW is a "POTW" as that term is defined by 40 C.F.R. §§ 122.2 and 403.3.

38. At all times relevant to the complaint, the storm sewers in and around the Main Building, the storm drains in and around the Pretreatment Facility, the Pretreatment Facility outfall, and the KJ POTW outfall were "point sources" as defined by Section 502 of the Act, 33 U.S.C. § 1362(14).

39. Tributary No. 25 and Highland Brook are waters of the United States, as defined by Section 502 of the Act, 33 U.S.C. § 1362(7).

40. The Orange County Division of Environmental Facilities and Services ("Orange County DEF&S") operates the KJ POTW through a contractor, Camo Pollution Control, Inc. ("Camo").

41. The KJ POTW is authorized, in accordance with SPDES Permit number NY0250520, to discharge treated wastewater within limits set by the permit.

42. During all times relevant to this complaint, the Poultry Plant has been an "industrial user" of the KJ POTW, as that term is defined in 33 U.S.C. § 1362(18) and 40 C.F.R. § 403.3(v). The wastes that the Poultry Plant discharges to the KJ POTW are "pollutants," as that term is defined at 33 U.S.C. § 1362(6).

43. On information and belief, during all times relevant to this complaint, the Poultry Plant has been the only significant industrial user of the KJ POTW.

44. The Orange County Department of Public Works issued an industrial wastewater discharge permit, number 006-09, to KJ Meat Market for the Poultry Plant, effective June 15, 2009 (hereinafter "Orange County Permit").

VIOLATIONS AND ENFORCEMENT HISTORY

A. Defendants Failed to Obtain a Stormwater Permit and Discharged Untreated Wastewater to Navigable Waters

45. On multiple occasions between 2007 and 2010, according to reports by Camo to Orange County DEF&S, the Pretreatment Facility's wet well and the equalization tanks had overflows that resulted in untreated wastewater being discharged to the storm drains that discharge to Highland Brook, which discharged to Tributary No. 25.

46. In addition, according to the KJ POTW's incident reports, employees of the Poultry Plant discharged waste ferric sulfate from the Pretreatment Facility directly into the KJ POTW. On August 26, 2009, KJ POTW staff observed Poultry Plant employees dumping waste

ferric sulfate into a sampling manhole located on the KJ POTW's property, which discharged to Highland Brook and ultimately discharged to Tributary No. 25. Ferric sulfate is a hazardous substance, as defined by 40 C.F.R. § 302.4, and is corrosive to copper, copper alloys, mild steel, and galvanized steel. Ferric sulfate is also a "pollutant," as that term is defined at 33 U.S.C. § 1362(6).

47. On May 11, 2010, EPA performed a routine compliance inspection (the "May 2010 Inspection") of the Poultry Plant.

48. The May 2010 Inspection revealed that on multiple occasions, there were overflows of untreated wastewater at the Main Building and at the Pretreatment Facility, and that these overflows flowed into storm drains at the Pretreatment Facility and/or storm sewers at the Main Building, and were ultimately discharged to Tributary No. 25. EPA observed that areas in and around the storm drains at the Pretreatment Facility were contaminated with process waste including chicken parts. In addition, consistent with Camo's reporting, *see supra* ¶ 45, EPA observed that there had been overflows from the Pretreatment Facility's wet well and that these overflows had contaminated the area around the wet well with process waste.

49. EPA observed during the May 2010 Inspection that the roadways surrounding the Main Building were contaminated with salt, and that the Main Building had neither enclosed nor covered its salt. The salt storage area was neither enclosed nor covered, and bags of salt were broken and left exposed to the elements. Defendants' improper storage of and failure to enclose salt at the Main Building caused discharged stormwater to become contaminated with salt. The stormwater contaminated by salt flowed into catch basins in and around the Main Building, which discharged to storm sewers that ultimately discharged to Tributary No. 25. The discharged stormwater was a "pollutant," as that term is defined at 33 U.S.C. § 1362(6).

50. As a result of the May 2010 Inspection and subsequent discussions with NYSDEC, EPA determined that, among other things, the Poultry Plant had not submitted a Notice of Intent nor prepared a Stormwater Pollution Prevention Plan and, therefore, was not covered by the MSGP.

51. Pursuant to its authority under Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), on August 5, 2010, EPA issued an Administrative Order for violations of the Act at the Poultry Plant that were revealed by the May 2010 Inspection. Among other things, the Administrative Order directed KJ Poultry to meet the requirements to obtain coverage under the MSGP, comply with the requirements of the MSGP, report all unpermitted discharges of wastewater to EPA and NYDEC within 24 hours of the occurrence of any unpermitted discharges, and submit and implement a plan of action to prevent future discharges into the storm drains and into the KJ POTW. The Administrative Order also required KJ Poultry to implement enhanced monitoring and reporting of its discharges into the KJ POTW.

52. By letter dated September 9, 2010, KJ Poultry responded to EPA's Administrative Order. In the letter, KJ Poultry formally acknowledged receipt of the Administrative Order and claimed that the Poultry Plant intended to comply fully with the Administrative Order. KJ Poultry further represented that because the Poultry Plant's owners/operators were unavailable during the Jewish holidays, KJ Poultry would have to wait "as soon as the holidays clear" before providing EPA with "more detailed materials with respect to compliance and scheduling." However, it was not until April 2011, nearly eight months after the issuance of the Administrative Order, that Defendants finally provided a response to the Administrative Order.

53. After EPA's May 2010 Inspection, EPA received notice of additional discharges from the Poultry Plant entering waters of the United States in violation of the Act.

54. On December 30, 2010, EPA received a report from NYSDEC that two spills of wastewater occurred at the Pretreatment Facility, during the week of December 30, 2010. As a result of these spills, NYSDEC issued a notice of violation to KJ Poultry.

55. On February 6, 2011, EPA received a report from NYSDEC that a spill of "raw chicken effluent" occurred in the area surrounding the Pretreatment Facility.

56. On February 22, 2011, EPA received a report from NYSDEC that a spill of 4,500 gallons of wastewater occurred at the Pretreatment Facility.

57. On March 21, 2011, EPA conducted another inspection (the "March 2011 Inspection") of the Main Building, the Pretreatment Facility, and the outfall north of the Pretreatment Facility. EPA found the remains of rubber gloves of the type used at the KJ Poultry Plant, the remains of butchered poultry, and other unidentifiable material in the outfall.

58. The March 2011 Inspection also revealed that residue that appeared to be from the spills that occurred at the Pretreatment Facility during the week of December 30, 2010, was still present on the ground at the Pretreatment Facility. The residue contained poultry processing waste byproducts, including complete and still-decomposing poultry feathers.

59. On or about March 27, 2012, KJ Poultry reported to NYSDEC and EPA that on March 18, 2012, a sludge tank in the Pretreatment Facility overflowed and spilled untreated wastewater effluent outside the building. According to KJ Poultry, some amount of the sludge spill flowed into the storm drains that ultimately discharge to Tributary No. 25.

60. On or about March 29, 2011, over ten months after the May 2010 Inspection, Defendants untimely submitted a Notice of Intent to NYSDEC. NYSDEC received the Notice of Intent on April 1, 2011.

61. Under Section I.E.3.a of the MSGP, owners or operators who submit a Notice of Intent in accordance with the requirements of the MSGP are authorized to discharge stormwater pursuant to the MSGP's terms and conditions 30 calendar days after the date that the Notice of Intent is received. Accordingly, Defendants were not covered by the MSGP until May 1, 2011. Prior to May 1, 2011, the Poultry Plant's discharges of stormwater associated with its industrial activities were not covered by the MSGP or any other permit.

62. In addition, Section III.B of the MSGP requires an owner or operator to prepare a Stormwater Pollution Prevention Plan that provides for compliance with the terms of the MSGP on or before the date of submission of the Notice of Intent. On information and belief, Defendants untimely prepared a Stormwater Pollution Prevention Plan on or around April 25, 2011, approximately one month *after* submitting their Notice of Intent on or about March 29, 2011.

B. Defendants Interfered With the Operations of the KJ POTW

63. Beginning as early as August 2007, Orange County DEF&S's contractor, Camo, reported to the Orange County DEF&S that the Poultry Plant caused "operational difficulties" for the KJ POTW. The Poultry Plant caused excess amounts of Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, and Fats, Oils, and Greases to be discharged into the KJ POTW, which hampered the KJ POTW's ability to treat these pollutants before it released processed wastewater that ultimately discharged to Tributary No. 25.

64. In addition, dramatic increases in the volume of wastewater discharged by the Poultry Plant to the KJ POTW further reduced the KJ POTW's ability to treat adequately pollutants. While Camo and KJ POTW records indicated that the Poultry Plant initially discharged approximately 50,000 gallons of wastewater per day into the KJ POTW, from 2008

onwards, the Poultry Plant has discharged between 130,000 and 450,000 gallons per day of treated and untreated wastewater to the KJ POTW. Due to the high levels of Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, and Fats, Oils, and Grease in the Poultry Plant's wastewater, on hundreds of occasions this flow interfered with the KJ POTW's capacity to treat wastewater, passed through the KJ POTW without treatment, and caused the KJ POTW's discharges to repeatedly exceed the effluent limitations and other limitations contained in its SPDES permit.

65. On January 28, 2008, Camo reported to Orange County DEF&S that "unusual amounts of blood content in the sewage from the poultry processing plant" limited the effect of Camo's treatment processes and therefore caused the KJ POTW to exceed the coliform limits in its SPDES permit. In addition, at least three sampling events that took place at the KJ POTW in 2009 show that the KJ POTW exceeded the coliform limits in its SPDES permit on at least 60 days during this time period.

66. On July 8, 2008, Camo reported to Orange County DEF&S that the KJ POTW had violated its SPDES permit with respect to ammonia levels, because of high levels of Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, and Fats, Oils, and Grease in the Poultry Plant's wastewater. Sampling events that took place at the KJ POTW from 2008 to 2011 show that the KJ POTW exceeded the ammonia limits in its SPDES permit on at least 180 days during this time period, and exceeded the Total Suspended Solids limits in its SPDES permit on at least five days during this time period. Camo further reported on July 8, 2008, that interference from the Poultry Plant's wastewater also "causes premature fouling of the sand filters, potential odors, and an overall burden on the facility and its existing equipment."

67. On several occasions between 2008 and 2010, Camo reported to Orange County DEF&S that sediment from the Poultry Plant's wet well that was pumped directly into the KJ POTW caused heavy scum and debris to accumulate in the KJ POTW's receiving chamber. The heavy accumulations interfered with the KJ POTW's ability to function.

68. From 2008 to 2010, Camo noted that "severe and significant odors" were emanating from the Pretreatment Facility and that overflows of untreated wastewater from the Pretreatment Facility were causing "short-term and long-term" odors at the KJ POTW.

69. In October 2011, Orange County DEF&S advised the Poultry Plant that samples of the Poultry Plant's final effluent collected by Camo from July 14, 2011, to September 21, 2011, showed that the Poultry Plant had exceeded its permit discharge limits for Carbonaceous Biochemical Oxygen Demand and Total Suspended Solids during this time. In addition, Pretreatment Compliance Reports issued by KJ Poultry indicate that the Poultry Plant exceeded the discharge limits in its Orange County Permit for Carbonaceous Biochemical Oxygen Demand and Total Suspended Solids from August 26, 2009, through November 21, 2011, and for Fats, Oils and Greases from September 1, 2009, through September 20, 2011.

CLAIMS FOR RELIEF AGAINST DEFENDANTS

FIRST CLAIM FOR RELIEF

Unpermitted Discharges of Stormwater Associated with Industrial Activity and Overflows from the Pretreatment Facility

70. Paragraphs 1 through 69 are realleged and incorporated as if fully set forth in this Paragraph.

71. From at least January 2008 through May 1, 2011, activities conducted by the Poultry Plant have included poultry slaughtering and processing operations regulated by Sector

U of the MSGP. During this time period, Defendants discharged stormwater associated with industrial activities and wastewater from the Poultry Plant into waters of the United States.

72. Pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342, and the regulations promulgated thereunder, Defendants were required to obtain coverage under the MSGP before commencing operations at the Poultry Plant. Prior to May 1, 2011, Defendants did not obtain coverage under the MSGP, and the Poultry Plant's discharges of stormwater associated with its industrial activities were not covered by the MSGP or any other permit. Defendants had failed to implement or properly implement Best Management Practices and had not satisfied other requirements needed in order to be covered by the MSGP.

73. The discharges of stormwater contaminated with wastes from the industrial activities of the Poultry Plant were discharges of pollutants within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

74. The spills and overflows of untreated wastewater from the Pretreatment Facility into storm drains that discharged to Highland Brook and ultimately discharged to Tributary No. 25 were discharges of pollutants within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

75. Each of the unpermitted discharges of stormwater contaminated with pollutants from the Poultry Plant into the waters of the United States violated Section 301 of the Act, 33 U.S.C. § 1311.

76. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), as modified by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvements Act of 1996, and as implemented by 61 Fed. Reg. 69,364 (Dec. 31, 1996); 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 73,345 (Dec. 11, 2008), Defendants

are liable for civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, and up to \$37,500 per day for each violation occurring after January 12, 2009.

SECOND CLAIM FOR RELIEF

Pass Through and Interference with the KJ POTW

77. Paragraphs 1 through 69 are realleged and incorporated as if fully set forth in this Paragraph.

78. From at least January 2008 to April 2011, the Pretreatment Facility's discharges to the KJ POTW caused the KJ POTW to violate the requirements of its SPDES permit, including but not limited to the final numeric effluent limits for ammonia, Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, Fats, Oils, and Grease, and coliform. On many occasions, the Pretreatment Facility's discharges inhibited the KJ POTW's treatment processes and its ability to treat other wastes.

79. These discharges from the Pretreatment Facility constituted "Interference" and/or "Pass Through" at the KJ POTW as those terms are defined by 40 C.F.R. §§ 403.3(k) and (p).

80. Each discharge of wastewater from the Pretreatment Facility to the KJ POTW that caused the KJ POTW to exceed the numeric limits in its SPDES permit, that constituted a Pass Through, or that constituted an Interference was a violation of Section 307 of the Act, 33 U.S.C. § 1317, and its implementing regulations at 40 C.F.R. Part 403.

81. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), Defendants are liable for civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, and up to \$37,500 per day for each violation occurring after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America respectfully requests that the Court enter judgment against Defendants as follows:

(a) Ordering that Defendants be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), civil penalties of \$32,500 per day for each violation of Sections 301 and 307 of the Act, 33 U.S.C. §§ 1311, 1317, occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January 12, 2009;

(b) Ordering that Defendants reimburse the United States for the costs and disbursements of this action; and

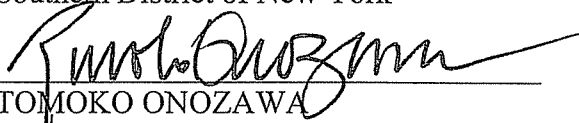
(c) Ordering such other relief as the Court deems just.

Date: October 23, 2014

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York

By:


TOMOKO ONOZAWA
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel.: (212) 637-2721
Fax: (212) 637-2686
tomoko.onozawa@usdoj.gov

SAM HIRSCH
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

OF COUNSEL:

LAUREN FISCHER

Assistant Regional Counsel

U.S. Environmental Protection Agency Region 2

290 Broadway, 16th Floor

New York, New York 10007