



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

November 17, 2022

TRANSMITTED VIA E-MAIL

Mr. Randy K. Roberts, Manager
RKR Feeders, L.L.C.
P.O. Box 100
Clayton, NM 88415
saddlemountaincowboy@gmail.com

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2023-1718
Facility No. NMG010022

Dear Mr. Roberts:

Enclosed is an Administrative Complaint (Complaint) issued to RKR Feeders, L.L.C. (facility) for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The violations alleged include (a) submitting to EPA an incomplete annual report for the year 2021, and (b) submitting the year 2021 annual report late, after the March 31st deadline specified in the facility's CAFO permit. The EPA requests that you immediately confirm receipt of this e-mail and the attached Complaint by a response e-mail to senkayi.abu@epa.gov.

You, as the representative of RKR Feeders, L.L.C., have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed 40 CFR Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," for information regarding hearing and settlement procedures. Also note that if should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of four thousand dollars (\$4,000) may be assessed against you without further proceedings.

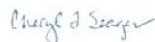
Whether or not you request a hearing, we invite you to confer informally with the EPA concerning the alleged violation and the amount of the proposed penalty. You may represent RKR Feeders, L.L.C. or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

Also enclosed for your review is the Consent Agreement and Final Order (Consent Agreement) that specifies a proposed settlement agreement between EPA and RKR Feeders, L.L.C. resolving the violations alleged in the Complaint. If you wish to enter into this Consent Agreement, please sign, date, and return it to Ms. Ellen Chang-Vaughan (6RC-EW) at the address above. If you agree to settle this matter by signing and returning the Consent Agreement, EPA will solicit public comments, which may impact the settlement. After consideration of public comments, EPA will sign and issue the Consent Agreement which is effective thirty (30) days after the issuance date. Please do not send payment of the penalty until you receive the Consent Agreement signed by EPA. By signing the Consent Agreement and agreeing to settle the matter, you waive your right to a hearing on, and to a judicial appeal of, the agreed civil penalty specified in the Consent Agreement.

Please also find enclosed an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission.

The EPA is committed to ensuring compliance with the requirements of the CAFO program, and my staff will assist you in any way possible. If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Dr. Abu Senkayi, of my staff, by phone (214 665-8403) or by email (senkayi.abu@epa.gov).

Sincerely,



Digitally signed by
CHERYL SEAGER
Date: 2022.11.17
17:02:39 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

ec: w/complaint - Regional Hearing Clerk

Susan Lucas Kamat, Program Manager
Point Source Regulation Section
New Mexico Environment Department
Surface Water Quality Bureau
susan.lucaskamat@state.nm.us

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

RKR Feeders, L.L.C.

Respondent

NPDES No. NMG010022

§ Docket No. CWA-06-2023-1718
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 6 (Complainant). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. §§ 22.50-22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. The Respondent, RKR Feeders, L.L.C., doing business as Union County Feedlot, is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant (relevant time period) to the violations alleged herein, and within the meaning of 40 C.F.R. § 122.2, Respondent owned or operated a feedlot, Union County Feedlot, located west of Clayton, on the north side of Highway 64/87, in Union County, New Mexico (facility). The facility is a concentrated animal feeding operation (CAFO), as defined by Section 502(14) of the Act and 40 C.F.R. § 122.23(b)(4).

3. Because Respondent owned or operated a facility that is defined as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

4. Respondent applied for and was issued by EPA an NPDES CAFO Permit Number NMG010022 (permit), under Section 402 of the Act, 33 U.S.C. § 1342. At all relevant times, Respondent was required to comply with the terms and conditions of the CAFO permit, including requirements to submit annual reports to EPA. Part V.A. of the CAFO permit requires CAFO operators to submit annual reports to EPA by the 31st day of March. However, this facility violated its CAFO permit by failing to submit its 2021 annual report by the March 31 deadline, as required by the CAFO permit. The 2021 annual report was also incomplete and did not include information about the quantity of the manure generated during 2021 and how that manure was used or disposed of.

5. On August 16, 2022, EPA issued to Respondent a Notice of Potential Violations and Opportunity to Confer (NOPVOC) letter, concerning the alleged violations. The NOPVOC letter also provided the Respondent an opportunity to confer with the EPA regarding the alleged violations.

6. On August 23, 2022, EPA had a conference call via Microsoft Teams with a representative of the facility to discuss the alleged violations. The facility representative agreed with EPA regarding the alleged violations.

7. EPA has notified the New Mexico Environment Department (NMED) of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

8. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the public notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

9. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of four thousand dollars (\$4,000).

10. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which include such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

IV. Failure to File an Answer

11. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

12. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure

to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

13. If Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings thirty (30) days after a Final Default Order is issued.

14. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

15. Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Ellen Vaughan (6RC-EW)
vaughan.ellen@epa.gov
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

16. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

17. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to

Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental rules at 40 C.F.R. § 22.38.

18. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

19. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

20. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403 or senkayi.abu@epa.gov.

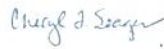
21. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (Consent Agreement) pursuant to 40 C.F.R. § 22.18(b). The issuance of a Consent Agreement would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such

Consent Agreement and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted, and a hearing held, only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the Consent Agreement.

22. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

November 17, 2022

Date



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Date: 2022.11.17 17:00:56
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Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

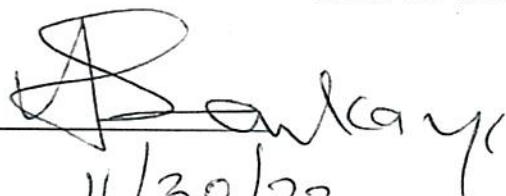
Original delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Copy by email Mr. Randy K. Roberts
RKR Feeders, L.L.C.
P.O. Box 100
Clayton, NM 88415
saddlemountaincowboy@gmail.com

Copy by email Ms. Susan Lucas Kamat, Program Manager
Point Source Regulation Section
New Mexico Environment Department
Surface Water Quality Bureau
1190 S. St. Francis Dr.
P.O. Box 5469
Santa Fe, NM 87502
susan.lucaskamat@state.nm.us

Copy by email: Ms. Ellen Vaughan (6RC-EW)
vaughan.ellen@epa.gov
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Dated: _____


11/30/22