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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

Permit No. NMG010022

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DOCKET NO. CWA-06-2023-1718

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (Consent Agreement) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This Consent Agreement is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. On November 17, 2022, EPA Region 6 issued to Respondent an administrative complaint (Complaint) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

3. EPA and Respondent (Parties) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this Consent Agreement is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this Consent Agreement resolves only those violations alleged by EPA in the Complaint issued on November 17, 2022.

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4. The Respondent admits the jurisdictional allegations of the Complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint or this Consent Agreement. This Consent Agreement states a claim upon which relief may be granted.

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this Consent Agreement and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this Consent Agreement and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Respondent, RKR Feeders, L.L.C. 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.

8. 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 feed yard facility located west of Clayton, on the north side of Highway 64/87, in Union County, New Mexico (facility), which was the subject of the Complaint.

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that was a "point source" subject to a "discharge" of "pollutants" to identified "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility

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were subject to the provisions of the Act, 33 U.S.C. § 1251 et seq., and the National Pollutant Discharge Elimination System (NPDES) program; and Respondent violated the facility's permit by failing to submit annual reports in a timely manner, as required by the facility's CAFO permit.

10. With the issuance of the Complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the Complaint via the internet at www.epa.gov/region6/publicnotice and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of four thousand dollars (\$4,000) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this Consent Agreement:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

U.S. Environmental Protection Agency

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Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

d. By credit card payments to <https://www.pay.gov>
(Insert sfo I.1 in the search field)

In the Matter of RKR Feeders, L.L.C. Docket No. CWA-06-2023-1718, should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
- (b) Chief, NPDES Compliance Section (6ECD-WA)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
- (c) Chief, Water Legal Branch (6RC-EW)

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U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

B. GENERAL PROVISIONS

16. To execute this Agreement, Respondent shall (1) sign and email a signed pdf copy to senkayi.abu@epa.gov and (2) mail a copy of the Consent Agreement, with original signature, to:

Dr. Abu Senkayi
U.S. EPA Region 6 (ECD-WA)
1201 Elm Street, Suite 500
Dallas, TX 75270

17. Issuance of this Consent Agreement does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

18. The provisions of this Consent Agreement shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

19. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this Consent Agreement.

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20. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.
21. In recognition and acceptance of the foregoing:

Randy K Roberts
Randy K. Roberts, Manager

Jan. 12, 2023
Date:

Cheryl T. Seager

Digitally signed by Seager, Cheryl
Date: 2023.01.30 12:55:00 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

January 30, 2023
Date:

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: _____

**THOMAS
RUCKI**

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=68001003655804
Date: 2023.02.06 10:03:18 -05'00'

Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 202~~0~~³, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

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, Manager
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
susan.lucaskamat@state.nm.us

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

2-6-2023

Dated: Ellen Vaughn