

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

J-SIX FARMS, INC.)
RICE COUNTY, KANSAS)

Respondent,)

Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))

) Docket No. CWA-07-2007-0067

) CONSENT AGREEMENT AND
) FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and J-Six Farms, Inc. (Respondent) have agreed to settle the alleged violations set forth in this Consent Agreement and Final Order. Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged discharges of pollutants into Squaw Creek, a navigable water of the United States in Doniphan County, Kansas.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation into the navigable waters of the United States.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, among other things, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

4. The CWA prohibits the unpermitted discharge of “pollutants” by any “person” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include, among other things, biological materials and agricultural waste discharged to water.

6. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

7. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include interstate rivers and streams, and tributaries thereto.

8. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 301, 33 U.S.C. § 1311.

Factual Allegations

9. Respondent is a corporation and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. Respondent owns and operates an animal feeding operation that is located in Sections 5 and 8 of Township 1 North, Range 19 East in Doniphan County, Kansas (Facility). The Facility consists of six confinement buildings where approximately 1,200 sows are confined. The buildings are equipped with slatted floors that drain to subterranean pits. Waste from the pits is pumped through piping to a primary lagoon that functions as a solids settling basin. Waste water flows from the primary basin through a channel into a secondary lagoon. Waste water flows from the secondary lagoon through a tertiary lagoon to a quarternary lagoon. Respondent

pumps waste water from the quarternary lagoon and land applies the waste water to adjacent cropland.

11. On or about June 23, 2005, a breach in a retention berm of the Facility's secondary lagoon resulted in a release of swine-related waste water from the Facility. The breach was caused by an animal that burrowed through the retention berm. The waste water contents of the secondary lagoon discharged into Squaw Creek.

12. On June 28, 2005, EPA conducted a compliance evaluation inspection of the Facility. At the time of the inspection, the EPA inspector observed that the breach in the secondary lagoon had been repaired by the Respondent. The EPA inspector also observed the secondary lagoon no longer contained waste water and that there was evidence that waste water from the secondary lagoon had discharged to Squaw Creek.

13. Squaw Creek is a perennial stream that is adjacent to the Facility. The Creek is a tributary of the Missouri River. Squaw Creek is a water of the United States.

14. The waste water discussed in Paragraph 11 above contained agricultural wastes that were "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The pipe through which swine-related waste is pumped from the confinement buildings to the primary lagoon and the breach in the secondary lagoon's retention berm are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent did not have a NPDES permit for the Facility that would allow the discharge described in Paragraph 11 above. Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1342, by discharging pollutants from a point source to waters of the United States without a NPDES permit.

Alleged Violations

17. The allegations set forth in paragraphs 1 through 16 are incorporated herein.

18. The Facility discharged through a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Squaw Creek is a water of the United States, as defined by 40 C.F.R. Part 122.2.

20. On or about June 23, 2005, Respondent discharged swine-related waste water from a point source into Squaw Creek. The discharge contained "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The discharge described in Paragraph 11 above occurred without a NPDES permit and, as such, constituted an unauthorized discharge of pollutants from a point source to waters of the United States. The discharge is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

CONSENT AGREEMENT

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

23. Respondent neither admits nor denies the factual allegations contained in this Consent Agreement and Final Order.

24. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

25. Respondent and Complainant each agree to bear their own costs and attorney's fees.

26. 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.

Supplemental Environmental Project (SEP)

27. Respondent expended at least \$6,734 (Total SEP Expenditure) in approvable costs to conduct an engineering evaluation of its waste handling system. Approvable costs only include costs directly related to the performance of the SEP pursuant to the requirements of this Order. Respondent provided itemized documentation of the costs incurred by Respondent to EPA upon completion of the SEP.

28. The engineering evaluation included, among other things, an analysis of the Facility's waste retention lagoons to determine if the lagoons are suitably sized and constructed to properly manage the waste generated at the Facility. Where waste retention lagoons are determined to allow for adequate storage, the engineering evaluation assessed whether lagoons can be eliminated to improve waste management. The results of the evaluation and a discussion of any corrective measures that may be necessary to implement recommendations identified by the evaluation were presented to EPA in the form of a report. Respondent completed the engineering evaluation and submitted a report produced and certified by a professional engineer that evaluates the waste handling system at the Facility on May 31, 2007.

Penalty

29. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty of five thousand dollars (\$5,000). Mitigating factors include Respondent's performance of the SEP described above.

30. Respondent shall submit payment of the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. EPA Region 7
P.O. Box 371099M
Pittsburgh, PA 15251.

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

31. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

32. Payment of the entire civil penalty and the completion of the SEP shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

33. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating within the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. The effect of the settlement described in paragraph 30 above is conditioned upon the accuracy of this certification.

In the Matter of J-Six Farms, Inc.
Consent Agreement/Final Order

34. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

35. The undersigned representative of Respondent certifies that he is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

36. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

8/3/07
Date


John A. Kramer
J-Six Farms, Inc.

For the United States Environmental Protection Agency - Region 7

9/24/2007
Date



J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency

09/24/07
Date

for 

William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.

Date: September 26, 2007



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

IN THE MATTER OF J-Six Farms, Inc., Respondent
Docket No. CWA-07-2007-0067

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John A Kramer
J-Six Farms, Inc
PO Box 170
Seneca, Kansas 66538

Dated: 9/26/07


Kathy Robinson
Hearing Clerk, Region 7