

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§ Docket No. CWA-06-2023-1701
	§
EXPO New Mexico,	§
	§ Proceeding to Assess a
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
NPDES No. NMG010068	§

**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. EXPO New Mexico (Respondent) is a political subdivision of the New Mexico State, and as such, Respondent is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all relevant times, Respondent owned, or operated EXPO New Mexico concentrated animal feeding operation (CAFO), located on the New Mexico State Fairgrounds at 300 San Pedro Dr. NE, Albuquerque, Bernalillo County, New Mexico (facility), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

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 permit coverage (Permit No. NMG010068) under the CAFO general permit which became effective on August 4, 2009, and was re-issued on September 1, 2016. At all relevant times, Respondent was required to comply with the terms and conditions of the CAFO permit, including the 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 31<sup>st</sup> day of March. However, the facility has violated its CAFO permit by failing to submit annual reports for the last five years. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$56,460.

5. On August 16, 2022, EPA emailed Respondent a letter notifying Respondent that EPA had not received any annual reports for the last five years. The letter informed Respondent of the potential violations of the Act and that EPA can pursue enforcement actions in response to these violations. The letter also provided the Respondent an opportunity to confer with the EPA regarding this matter.

6. On August 30, 2022, EPA had a conference call via Microsoft Teams with representatives of the facility to discuss these violations. The representatives concurred with EPA

regarding the violations and agreed to do whatever is needed to address the violations and bring the facility into compliance with its CAFO permit.

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 thirty thousand dollars (\$30,000).

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 Chang-Vaughan (6RC-EW)  
chang-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, by phone (214 665-8403) or by email (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 2, 2022

Date

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. Joseph Holloway, ESQ Deputy Director EXPO New Mexico, 300 San Pedro Dr. NE Albuquerque, NM 87108 joseph.holloway@state.nm.us
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 Chang-Vaughan (6RC-EW) chang-vaughan.ellen@epa.gov U.S. EPA, Region 6 1201 Elm Street, Suite 500 Dallas, TX 75270

\_\_\_\_\_ Dated: \_\_\_\_\_