

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2024-0009
Wickstrum Farms, Inc.)	
)	
&)	
)	
Wickstrum Cattle, LLC)	
)	COMPLAINT AND
Respondents)	CONSENT AGREEMENT /
)	FINAL ORDER
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”), and Respondents have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondents have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. The Respondents in this case are Wickstrum Farms, Inc. and Wickstrum Cattle, LLC (“Respondents”).

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

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

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the terms “discharge of a pollutant” and “discharge of pollutants” as, inter alia, any addition of any pollutant to navigable waters from any point source.

9. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” as, inter alia, biological materials and agricultural waste discharged to water.

10. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” 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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as, inter alia, the “waters of the United States,” as defined at 40 C.F.R. § 122.2.

13. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” as, inter alia, any individual, corporation, partnership, or association.

14. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

15. The Kansas Department of Health and Environment (“KDHE”) is the state agency in Kansas with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA and applicable implementing regulations.

16. Pursuant to 40 C.F.R. § 122.23(a), “concentrated animal feeding operations,” or “CAFOs,” are point sources subject to NPDES permitting requirements.

17. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b).

18. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

EPA’s General Allegations

19. Respondents are each a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

20. At all times relevant to this action Respondents owned, operated, or otherwise controlled the properties for Wickstrum Farms Inc. located at NW1/4, Section 22, Township 8 S, Range 8 East NE1/4, Section 21, Township 8 S, Range 8 East and for Wickstrum Cattle LLC located at SW1/4 Section 9 & NW1/4 Section 16, Township 08S, Range 08E.

21. On April 10, 2023, EPA personnel conducted a compliance evaluation inspection of the Wickstrum Farms, Inc. facility and the Wickstrum Cattle, LLC facility.

22. When Wickstrum Farms, Inc. was inspected, Wickstrum Farms, Inc.’s facility inventory records stated there were approximately 991 head of cattle at the facility. Wickstrum Farms, Inc. is permitted for a total of 1,499 head of cattle.

23. Wickstrum Farms, Inc. was issued an NPDES permit on November 14, 2016, with the associated permit number KS0100731. The permit was set to expire on October 23, 2019. A permit renewal application was received on September 24, 2019. The permit was not reissued by KDHE due to ongoing noncompliance. However, the permit was administratively extended by KDHE.

24. The Wickstrum Farms, Inc. facility is a large Concentrated Animal Feeding Operation (“CAFO”) as that term is defined in 40 C.F.R. § 122.23(b)(4), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), because the number of cattle other than mature dairy cows or veal calves that can be confined and fed at the Facility is greater than 999 head.

25. The Wickstrum Farms, Inc. facility is an animal feeding operation (“AFO”) as defined by 40 C.F.R. § 122.23(b)(1) because (i) it stables, confines, feeds, or maintains non-aquatic animals – specifically, cattle – for a total of 45 days or more in any 12-month period and (ii) “[c]rops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the [facility].”

26. During the inspection, the EPA’s inspector observed that runoff from the north corner of Pen #4 was not controlled and instead flows southwest to an unnamed tributary and then to Pleasant Run Creek.

27. Discharge of process wastewater from Wickstrum Farms, Inc. flowed into an unnamed tributary of Pleasant Run Creek.

28. When Wickstrum Cattle, LLC was inspected, Wickstrum Cattle, LLC’s facility inventory records stated there were approximately 8,871 head of cattle at the facility. Wickstrum Cattle, LLC is permitted for a total of 13,000 head of cattle.

29. Wickstrum Cattle, LLC was issued an NPDES permit on August 23, 2016, with the associated permit number KS0100145. The permit was set to expire on August 22, 2021. A permit renewal application was received on March 29, 2021. The permit was not reissued by KDHE due to ongoing noncompliance. However, the permit was administratively extended by KDHE.

30. The Wickstrum Cattle, LLC facility is a large Concentrated Animal Feeding Operation (“CAFO”) as that term is defined in 40 C.F.R. § 122.23(b)(4), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), because the number of cattle other than mature dairy cows or veal calves confined and fed at the Facility is greater than 999 head.

31. The Wickstrum Cattle, LLC facility is an animal feeding operation (“AFO”) as defined by 40 C.F.R. § 122.23(b)(1) because (i) it stables, confines, feeds, or maintains non-aquatic animals – specifically, cattle – for a total of 45 days or more in any 12-month period and (ii) “[c]rops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the [Facility].”

32. During the inspection of Wickstrum Cattle, LLC, the EPA’s inspector noted a manure solids stockpile that was uncontrolled. Runoff from the stockpile flowed directly into an unnamed tributary and then into Pleasant Run Creek. The facility’s NPDES permit requires that all process wastewater be contained.

33. During the inspection of the Wickstrum Farms, Inc. and Wickstrum Cattle, LLC facilities, the EPA’s inspector observed that runoff from the feed commodities area, which serviced both Wickstrum Farms, Inc and Wickstrum Cattle, LLC, was uncontrolled and flowed directly into an unnamed tributary and then to Pleasant Run Creek. The facility’s NPDES permit requires that all process wastewater be contained.

34. Uncontrolled process wastewater from Wickstrum Cattle, LLC and Wickstrum Farms, Inc. discharged into two unnamed tributaries of Pleasant Run Creek. These tributaries have continuous flow at least three months of the year and are considered relatively permanent waters.

35. The tributaries are connected to Pleasant Run Creek, a perennial stream. Pleasant Run Creek is connected to Rock Creek, a perennial stream. Rock Creek is connected to Vermillion Creek, a perennial stream. Rock Creek is connected to the Kansas River, a traditionally navigable water.

36. Thus, the unnamed tributaries and Pleasant Run Creek are relatively permanent waters and “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

37. The facilities have discharged process wastewater to waters of the United States during significant rainfall events at least five times in the past five years.

38. Discharges of process wastewater from the facilities to the unnamed tributaries and Pleasant Run Creek constitute unauthorized discharges of pollutants from a point source to waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, its implementing regulations, and the conditions and limitations of the Respondents’ NPDES permits.

EPA’s Allegations of Violation

39. The facts and allegations stated above are herein incorporated.

40. Respondents’ NPDES permits do not authorize the discharges of process wastewater described herein.

41. Respondents’ discharges of pollutants from a point source into waters of the United States occurred without authorization of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and, therefore, violated Section 301 of the CWA, 33 U.S.C. § 1311 its implementing regulations, and the conditions and limitations of the Respondents’ NPDES permits.

Penalty

42. As alleged by EPA above, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, for violations that occurred on or after November 2, 2015, where penalties are assessed on or after December 27, 2023, Respondents are liable for civil penalties of up to \$26,685 per day for each day during which the

violation continues, up to a maximum of \$333,552.

CONSENT AGREEMENT

43. Respondents and EPA agree to the terms of this Consent Agreement/Final Order.
44. Respondents admit the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.
45. Respondents neither admit nor deny the factual allegations asserted by the EPA in this Complaint and Consent Agreement/Final Order.
46. Respondents waive their right to contest any issue of fact or law set forth above, and their rights to appeal this Consent Agreement/Final Order.
47. Respondents and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
48. Respondents consent to receive service of the filed Consent Agreement and Final Order electronically at the following email addresses:
- Brent Haden
Attorney for Respondents
brent@showmelaw.com
49. The undersigned representative of Respondents certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondents to it.
50. Respondents understand and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.
51. Respondents certify by the signing of this Consent Agreement/Final Order that the Site is in compliance with EPA's Administrative Order for Compliance on Consent, Docket No. CWA-07-2024-0009, which will bring the Site into compliance with Section 402 of the CWA, 33 U.S.C. § 1342.

Penalty Payment

52. Respondents agree that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondents shall pay a civil penalty of **\$70,000** to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

53. The penalty payment shall identify Respondents by name and docket number “CWA-07-2024-0009,” and shall be by certified or cashier’s check made payable to “Treasurer, United States of America,” and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

54. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Adam Hilbert, Attorney
hilbert.adam@epa.gov

55. Respondents agree that no portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

56. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date stated in Paragraph 36 above through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

57. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further

required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent's TIN within 5 days of Respondent's issuance and receipt of the TIN.

Effect of Settlement and Reservation of Rights

58. Respondents' payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

59. The effect of settlement described above is conditional upon the accuracy of the Respondents' representations to the EPA, as memorialized in this Consent Agreement/Final Order.

60. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

61. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

62. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

63. The parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

64. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

65. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

66. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

67. Respondents and Complainant agree that this Consent Agreement/Final Order may be signed electronically in part and counterpart.


For the Complainant, United States Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Adam Hilbert
Office of Regional Counsel

For Respondents:

Wickstrum Farms, Inc. & Wickstrum Cattle, LLC


SIGNATURE

12-20-24
DATE

PRES
NAME/TITLE

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondents are ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

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

Copy by email to representative for Respondents:

Brent Haden
Attorney for Respondents
brent@showmelaw.com

For Complainant, U.S. Environmental Protection Agency Region 7:

Suzanne Ward
Enforcement and Compliance Assurance Division
ward.suzanne@epa.gov

Adam Hilbert
Office of Regional Counsel
hilbert.adam@epa.gov

Date

Signature