

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	Docket No. CWA-07-2025-0201
Martens Family Enterprises,)	
Inc.)	COMPLAINT, CONSENT AGREEMENT
)	AND FINAL ORDER
Respondents)	
)	
Proceedings under Section 309(g) of)	
the Clean Water Act, 33 U.S.C.)	
§ 1319(g))	

Preliminary Statement

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 Respondent, Martens Family Enterprises, Inc. ("Respondent"), 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 Respondent has violated a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

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") with concurrence of the Regional Counsel.

5.o Respondent is and was at all relevant times a corporation organized under the laws of, and authorized to do business in, the state of Kansas.

Statutory and Regulatory Framework

6.o 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 provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

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

8.o Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as the "waters of the United States, including the territorial seas."

9.o Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater and requires, in part, that a discharge of stormwater associated with an industrial activity comply with the requirements of an NPDES permit issued pursuant to Section 402 of the CWA.

10.o Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11.o 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12.o 40 C.F.R. § 122.26(b)(14)(x) defines "storm water discharge associated with industrial activity," in part, as construction activity, including "clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more."

13.o The Kansas Department of Health and Environment ("KDHE") is the state agency within the state of Kansas that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and its applicable implementing regulations.

14.o Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

EPA's General Allegations

15. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).o

16.o At all times relevant to this action, Respondent was the owner and/or operator of a residential construction site known as Heather Ridge South located in the Northeast Quarter of Section 24, Township 14 South, Range 23 East, Johnson County, in Olathe, Kansas (“Site”).

17.o There are two plats located on the Site (“Plat 4” and “Plat 5”) that are being developed into a single-family housing subdivision. Plat 4 and Plat 5 are part of a common plan of development as defined by 40 C.F.R. § 122.26(b)(14)(x).

18.o Starting in or around May 2021, Respondent conducted clearing and grading activities on Plat 4.

19.o Starting in or around August 2024, Respondent conducted clearing and grading activities on Plat 5.

20.o Since around May of 2021, and continuing to the present, Respondent has disturbed at least 31 acres within the Site.

21.o Stormwater, snow melt, surface drainage, and runoff water leave the Site and discharge into Coffee Creek.

22.o The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23.o Stormwater from the Site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24.o Coffee Creek is a perennial stream that flows into the Blue River, a perennial stream.

25.o The Blue River flows into the Missouri River, a traditional navigable water.o

26.o Coffee Creek and the Blue River are relatively permanent waters connected to the Missouri River, a traditional navigable water, and thus all are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

27.o Stormwater runoff from industrial activity at the Site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12), and requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

28. The KDHE issues and implements the Kansas Water Pollution Control General Permit and Authorization to Discharge: Stormwater Runoff from Construction Activities, General Permit No. S-MCST-2208-1 and Federal Permit No. KSR100000 ("Kansas General Permit").

29. Any individual seeking coverage under the Kansas General Permit is required to submit a Notice of Intent ("NOI") to the KDHE.

30. The principal requirement of the Kansas General Permit is for the owner and operator to develop and implement a Stormwater Pollution Prevention Plan ("SWP2").

31. After submittal of an NOI to KDHE by the Respondent, a permit (No. KSR116437) was issued under the Kansas General Permit on May 18, 2021, for Plat 4 to expire on July 31, 2027. The permit was terminated on April 14, 2025.

32. After submittal of an NOI to KDHE by the Respondent, a permit (No. KSR122360) was issued under the Kansas General Permit on June 10, 2024, for Plat 5 to expire on July 31, 2027.

33. From November 19th to the 27th of 2024, EPA conducted a compliance evaluation inspection ("Inspection") of the Site. The Inspection report was transmitted to the Respondent on January 16, 2025.

EPA's Allegations of Violation

Count 1

Failure to Install BMPs and/or Pollution Controls

34. The paragraphs above are re-alleged and incorporated herein by reference.

35. Part 7.2.5 of the Kansas General Permit requires the permittee to stabilize disturbed areas within 14 days after soil disturbing activities cease.

36. Part 7.2.9(4) of the Kansas General Permit requires the permittee to provide solid and hazardous waste management, which includes providing trash containers and regular site clean-up for proper disposal of solid waste.

37. During the Inspection, EPA representatives observed and documented missing BMPs and/or pollution controls on Plat 4, including:

- a. No erosion control or soil stabilization for lots 123-126 where soil disturbing activities had ceased for greater than 14 days;
- b. The east and southeast sides of the northeast retention pond, north of lots 125-127 had not been stabilized where soil disturbing activities had ceased for greater than 14 days;

- c.e Silt fence missing on portion of lot 116 that slopes towards the northeast retention pond;e
- d.e Silt fence missing on the downgradient slope of lots 123-126; ande
- e.e No trash containers on Plat 4 or at lots under construction and loose trash waste present at the perimeter of the central retention pond, at the perimeter of the northeast retention pond, inside storm sewer inlets, and at lots under construction.e

38.e Respondent's failures to provide BMPs and/or pollution controls are violations of the conditions or limitations of the Respondent's NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2

Failure to Properly Design, Implement and/or Maintain BMPs and/or Pollution Controls

39.e The paragraphs above are re-alleged and incorporated herein by reference.e

40.e Part 11.1 of the Kansas General Permit requires the permittee to properly maintain all stormwater controls.

41.e Part 7.2.3(5) of the Kansas General Permit requires the permittee to "minimize sediment discharges from the site."

42.e Part 7.2.3(15) of the Kansas General Permit requires the permittee's SWP2 Plan to "provide BMPs and/or pollution controls that, at a minimum, are designed, installed, and maintained to...[p]rovide storm drain inlet protection (such as rock bags) for inlets down gradient of disturbed project areas that are not fully stabilized or where construction activity will soon be started."

43.e Part 7.2.9(9) of the Kansas General Permit requires the permittee to address, "procedures and practices to eliminate the potential to discharge wash and/or rinse waters from concrete mixing equipment including ready mix concrete trucks."

44.e Part 7 of the Kansas General Permit requires the permittee to "fully implement the provisions of the SWP2 Plan required under this part as an enforceable condition of this NPDES general permit throughout the term of the construction project."

45. The Respondent's SWP2 Plan for Plat 4, Section 2.6, contains the requirements to "Protect Storm Drain Inlets", and states that the permittee will, "[i]nspect all gutterbuddys weekly and immediately after storm events for holes, tears, and snags. Check gutterbuddys for proper arrangement and displacement. Remove accumulated sediment when it reaches one-third the height...Make repairs immediately to the gutterbuddys if they have been damaged."e

46.e The Respondent's SWP2 Plans for both Plat 4 and Plat 5, Sections 3.3 require concrete washout areas to be constructed before street construction, and state that, "The

designated temporary below-ground concrete washout area will be constructed...with sufficient quantity and volume to contain all liquid and concrete waste generated by the washout operations..." and that the "area will be lined with plastic sheeting at least 10 mils thick and free of any holes or tears."

47.e During the Inspection, EPA representatives observed and documented improperly designed, implemented, and/or maintained BMPs and/or pollution controls at the Site, including:

- a.e Sediment controls topping with sediment and gravel over the one-third height threshold requiring maintenance;
- b.e Vegetation sprouting from the sediment accumulating against the sediment controls;
- c.e Sediment and debris in storm sewer inlets within the Site;
- d.e Murky brown water resting inside the storm sewer line that drains to the central retention pond;
- e.e A damaged inlet protection wattle;
- f.e Damaged silt fences;
- g.e Portable toilets stationed on street inlet platforms without containment;
- h.e Sediment laden water flowing in both retention ponds, the conveyance channels between the ponds, the discharge to the rock channel, and into Coffee Creek.
- i. The concrete washout area east of Plat 4 was not adequately sized or constructed and was releasing washout water outside of containment.

48.e Based on observations during the Inspection, Respondent failed to design, implement and/or maintain its storm drain inlet controls, silt fences, and other BMPs designed to minimize sediment discharges from the Site as required by the Kansas General Permit and its SWP2 Plans.

49.e Respondent's failures to design, implement and/or maintain its BMPs and/or pollution controls are violations of the conditions or limitations of the Respondent's NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3 **Inadequate Stormwater Pollution Prevention Plan**

50.e The paragraphs above are re-alleged and incorporated herein by reference.

51.e Part 7.2.8 of the Kansas General Permit requires the permittee to "include a description of measures that will be installed during construction to control pollutants in stormwater runoff that will occur after construction activities have been completed," in the SWP2.

52.e Part 7.2.9(9) of the Kansas General Permit requires the permittee to address "procedures and practices to eliminate the potential to discharge wash and/or rinse waters from concrete mixing equipment including ready mix concrete trucks."

53. EPA's review of Respondent's SWP2 for Plat 4 revealed that the following requirements were missing and/or inadequate:
- a. The Respondent failed to include a discussion of permanent post-construction stormwater controls with respect to the on-site retention ponds;
 - b. The Respondent failed to list the correct location of the concrete washout; and
 - c. The Respondent failed to list the correct SWP2 inspector.

54. Respondent's failure to develop an adequate and accurate SWP2 and/or to amend the SWP2 are violations of the conditions or limitations of the Respondent's NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Document Required Observations in Inspection Reports

55. The paragraphs above are re-alleged and incorporated herein by reference.

56. Part 7.2.10 of the Kansas General Permit requires the permittee to conduct and document regularly scheduled inspections and inspections after certain qualifying rain events.

57. Part 7.2.10 of the Kansas General Permit requires the permittee's inspection reports, "to include the following minimum information: inspector's name, date of inspection, observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, listing of areas where construction operations have permanently or temporarily stopped, and observations of stormwater discharge locations with respect to the effectiveness of the upgradient BMPs."

58. Review by EPA of the Respondent's inspection records for the Site revealed that necessary observations were not being documented, including adequate observations of stormwater discharge locations, locations where construction has ceased, and observations of discharges of sediment.

59. Respondent's failure to adequately document inspections is a violation of the conditions or limitations of the Respondent's NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 5

Failure to Timely Take Appropriate Corrective Actions Following Inspections

60. The paragraphs above are re-alleged and incorporated herein by reference.

61. Part 7.2.10 of the Kansas General Permit requires the permittee to note "any deficiencies in the operation or maintenance, effectiveness, adequacy or coverage extent of all installed BMPs, temporary stabilization measures and other pollution control measures identified during the inspection."

62. Part 7.2.10 of the Kansas General Permit also requires the permittee to correct any deficiencies in the "operation or maintenance, effectiveness, adequacy or coverage extent of all installed BMPs, temporary stabilization measures and other pollution control measures identified in the inspection report...within seven calendar days of the inspection unless infeasible."

63. Part 7 of the Kansas General Permit requires the permittee to "fully implement the provisions of the SWP2 Plan required under this part as an enforceable condition of this NPDES general permit throughout the term of the construction project."

64. Respondent's SWP2 Plans for both Plat 4 and Plat 5, Section 5.1.2 state that "If corrective actions are identified by the inspector during the inspection he will notify and submit a copy of the inspection report to the Project Manager, who will be responsible for initiating the corrective action within 24 hours of the report and completing maintenance as soon as possible or before the next storm event."

65. EPA's review of Respondent's inspection reports for Plat 4 and Plat 5 revealed deficiencies that were not corrected within the appropriate timeframes of the Kansas General Permit and/or its SWP2 plans.

66. Respondent's failure to timely take appropriate corrective actions is a violation of the conditions or limitations of the Respondent's NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

67. Respondent and the EPA agree to the terms of this Complaint and Consent Agreement/Final Order.

68. Respondent admits 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 Complaint and Consent Agreement/Final Order.

69. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Complaint and Consent Agreement/Final Order.

70. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Complaint and Consent Agreement/Final Order. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

71. Respondent and the EPA agree to conciliate the matters set forth in this Complaint and 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.

72. Respondent consents to receive service of the filed Complaint and Consent Agreement/Final Order electronically at the following email address: MFEIKC1@gmail.com.

73. The undersigned representative of Respondent certifies that they are fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

74. Respondent understands and agrees that this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

75. Respondent certifies by the signing of this Complaint and Consent Agreement/Final Order that Respondent is in compliance with the Clean Water Act, 33 U.S.C. § 1251 et seq. and its implementing regulations.

Terms of Payment

76. Respondent agrees to pay a civil penalty in the amount of **Ninety-Six Thousand, Seven-Hundred and Thirty Dollars (\$ 96,730.00)** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

77. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

78. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2025-0201.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
Via electronic mail to:
R7_Hearing_Clerk_Filings@epa.gov;

Samantha Pappas
Office of Regional Counsel
U.S. Environmental Protection Agency
Via electronic mail to:
pappas.samantha@epa.gov; and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov.

“Proof of payment” means, as applicable, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

79. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

- d. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:
- i. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - ii. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - iii. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - iv. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

80. **Allocation of Payments.** Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

81. **Tax Treatment of Penalties.** Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

82. 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

83. Respondent's payment of the entire civil penalty pursuant to this Complaint and 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.

84. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Complaint and Consent Agreement/Final Order.

85. Nothing contained in this Complaint and Consent Agreement/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.

86. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Complaint and 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 Respondent or to seek any other remedy allowed by law.

87. With respect to matters not addressed in this Complaint and 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

88. The Parties acknowledge that this Complaint and 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.

89. Pursuant to 40 C.F.R. § 22.31(b), this Complaint and Consent Agreement/Final Order shall be effective after signature by the authorized regional official and the date 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 Complaint and Consent Agreement/Final Order.

90. 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).


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

92. Respondent and Complainant agree that this Complaint and Consent Agreement/Final Order may be signed electronically in part and counterpart.

For the Respondent, Martens Family Enterprises, Inc.:



Signature



Date



Name



Title

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

Date

Alyse Stoy
Acting Director
Enforcement and Compliance Assurance Division

Date

Samantha Pappas
Attorney
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practicing 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 Respondent is 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 that on the date noted below, I sent a true and correct copy of this signed Complaint and Consent Agreement/Final Order in the stated manner to the following:

Copy emailed to Respondent:

Philip Martens
President, Martens Family Enterprises, Inc.
MFEIKC1@gmail.com

Brian Tadtman
Attorney for Respondent
brian@woodworthsnow.com

Copy emailed to representatives for Complainant:

Samantha Pappas
EPA Region 7 Office of Regional Counsel
pappas.samantha@epa.gov

Delia Garcia
EPA Region 7 Enforcement and Compliance Assurance Division
garcia.delia@epa.gov

Copy emailed to KDHE:

William Carr
Kansas Department of Health and Environment
William.J.Carr@ks.gov

Date

Regional Hearing Clerk Signature