

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:	§	DOCKET NO. CWA-06-2026-1792
	§	
Apache Feedyard	§	COMPLAINT, CONSENT AGREEMENT
Respondent	§	AND FINAL ORDER
	§	
Permit No.	§	
NMG010040	§	<i>Class I Administrative Penalty Proceeding under</i>
	§	<i>Section 309(g) of the Clean Water Act, 33 U.S.C.</i>
	§	<i>1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18</i>

CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class I civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(A), and 40 C.F.R. Part 22 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits).
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against any person who has violated, inter alia, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or has violated any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. The Administrator of EPA delegated authority to issue this Complaint, Consent Agreement and Final Order (CAFO) to the Regional Administrator of EPA Region 6, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division (Complainant).
3. Respondent is Apache Feedyard.

4. This CAFO, which contains the elements of a Complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

5. NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, except as authorized, *inter alia*, by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

8. Respondent completed a Notice of Change of Ownership on December 11, 2023, for NPDES Permit Number NMG010040 (permit). The permit became effective on October 20, 2017, and was administratively continued on August 31, 2021. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

9. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19.4, the EPA may assess a Class I civil administrative penalty of up to \$27,378 per day of

violation, not to exceed \$68,445 in total, against any person that has violated Section 301(a) or has violated any permit condition or limitation of a permit issued under Section 402 of the CWA that occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025.

III. JURISDICTIONAL ALLEGATIONS

10. Respondent is a limited liability company headquartered in Weatherford, Texas, and therefore, a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. At all times relevant to this action (all relevant times), Respondent owned or operated the Apache Feedyard (facility) located at Hwy 406, Clayton, New Mexico 88415 and was therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2. The facility is a Concentrated Animal Feeding Operation (CAFO), as defined by Section 502(14) of the Act and 40 C.F.R. §122.23(b).

12. Respondent agrees that, at all relevant times, EPA possessed jurisdiction over discharges of pollutants from point sources into waters of the United States.

IV. FACTUAL ALLEGATIONS

13. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” to the Rabbit Ear Creek, a tributary to Seneca Creek which flows into Clayton Lake, which is a “navigable water[s]” as defined in Clean Water Act Section 502(7) and thus “waters of the United States”.

14. Because Respondent owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the CWA and the National Pollutant Discharge Elimination System (NPDES).

15. Respondent had a CAFO General Permit No. NMG010040 (permit) issued under Section 402 of the CWA, 33 U.S.C. § 1342. At all relevant times, Respondent was authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

16. Part IV.C. General Inspection, Monitoring, and Record Keeping Requirements section of the CAFO General Permit requires the facility to create and maintain certain records regarding operation of the facility. Part V. Annual Reporting Requirements requires permittees to submit annual reports with specific detailed information. Annual reports shall be submitted to EPA by March 31st of the following year. Records shall be maintained until Respondent has submitted a Notice of Termination (NOT) to EPA and performed the NOT's necessary requirements (See Appendix B of the NM CAFO General Permit).

17. Respondent failed to submit annual reports for 2023, 2024, and 2025 which were due by March 31, 2024, March 31, 2025, and March 31, 2026, respectively.

18. Each violation of the permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. ADMINISTRATIVE PENALTY

19. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent agrees to a civil penalty in the amount of six thousand dollars (\$6,000) (Assessed Penalty) within thirty (30) days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk.

1. 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>. **However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.**

For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

20. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-06-2026-1792,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
vaughn.lorena@epa.gov

Anthony Loston
Supervisor, Analysis and Assessment Section (AAS)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
loston.anthony@epa.gov

Kristine Talbot
Senior Attorney, Water Legal Branch (ORCEW)
U.S. EPA,
Region 6
1201 Street,
Suite 500
Dallas, TX 75270-2102
talbot.kristine@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, a copy of the check, 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.

c. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

i. 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 any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

ii. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

iii. Late Payment Penalty. A late payment penalty of six percent (6%) per annum

will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

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. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

e. 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.

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

21. 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. In order 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 therein 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 sherrer.dana@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 further:

e. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days of the Effective Date of this Order per paragraph 21; and

f. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

22. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CAFO from federal, state, or local taxes.

23. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CAFO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter

during which such failure to pay persists. The EPA may also take other debt collection actions as authorized by law, including, but not limited to, the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

VI. APPLICABILITY

24. This CAFO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors, and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CAFO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CAFO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

25. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding only, Respondent:

- a. admits the jurisdictional allegations set forth in Section III of the CAFO;
- b. neither admits nor denies specific factual allegations set forth in Section IV of the CAFO;
- c. consents to all conditions specified in this CAFO and to the assessment of the civil administrative penalty set forth in Section V of the CAFO;
- d. waives any right to contest the allegations set forth in Section III and IV of this CAFO; and
- e. waives its right to appeal this proposed Final Order.

VIII. RESERVATION OF RIGHTS

26. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CAFO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged

herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

27. This CAFO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state, or local laws, regulations, or permits.

IX. ATTORNEYS FEES AND COSTS

28. Unless otherwise specified, each party shall bear its own attorney's fees and costs.

X. EFFECTIVE DATE AND TERMINATION

29. In accordance with C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CAFO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CAFO shall terminate when Respondent has complied with the requirements of this CAFO in full.

XI. PUBLIC NOTICE

30. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent of this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

31. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has notified the New Mexico Environment Department (NMED) and has afforded the State an opportunity to consult with EPA regarding this penalty action.

For Respondent Apache Feedyard

7/10/24
Date



John Kelley
Owner

For Complainant the U.S. Environmental Protection Agency, Region 6

Bryant Smalley
Chief
Water Enforcement Branch

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No.CWA-06-2026-1792) be entered, and that Respondent shall pay a civil penalty in the amount of six thousand dollars (\$6,000) in accordance with the terms of this Consent Agreement and 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.

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy was sent on this day in the following manner to the email addresses:

Copy via Email to Respondent – Delivery Receipt Requested

Jrkelley5746@gmail.com

Copy via Email to Complainant – Delivery Receipt Requested

bomar.lucas@epa.gov

with a copy sent to:

susan.lucaskamat@env.nm.gov
avery.young@env.nm.gov

Dated: _____