UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 26 2016

REPLY TO THE ATTENTION OF:

WC-15J

Ex. 6.(Personal Privacy) [redacted] President
Ex. 6 (Personal Privacy) Pork, Inc
Ex. 6.(Personal Privacy) [redacted]

Ex. 6.(Personal Privacy) [redacted]
In His Personal Capacity
Ex. 6.(Personal Privacy) [redacted]

Re: Docket No CWA-05-2016-0020

Dear Ex. 6.(Personal Privacy) [redacted]

I have enclosed one copy of the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed September 26, 2016 with the Regional Hearing Clerk.

The penalty amount agreed upon is $27,000 which is due 60 days after the effective date of this CAFO. A certified or Cashier Check should be made payable to the "Treasurer, United States of America", at the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

When submitting your check, **please be sure that the Case Docket Number is included at the bottom of your check.**

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There is now an On Line Payment Option available through the Department of Treasury at https://www.pay.gov which allows you to make payments using your credit card, checking or savings account. Using the Search Public Forms field (left side of page) enter "SFO 1.1" to access the EPA Miscellaneous Payments-Cincinnati Finance Center Form. Follow the instructions for payment. For the "Court Order# or Bill#", enter the Docket number above and in the "Type of Payment" field, select "Civil Penalty."

As indicated in your CAFO, a copy of the check or electronic transfer must be sent to:

LaDawn Whitehead (E-19J)
Regional Hearing Clerk
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

Joan Rogers (WC-15J)
Environmental Scientist
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

Sherry Estes (C-14J)
Office of Regional Counsel
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

If you have any questions, please contact Ms. Rogers at (312) 886-2785.

Sincerely,

Patrick F. Kuefler, Chief
Water Enforcement & Compliance Assurance Branch

Enclosures

cc: Jim Miles, IEPA

REGIONAL HEARING CLERK
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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	Docket No. **CWA-05-2016-0020**
Ex. 6 (Personal Privacy)PORK, INC.	)	
	)	
and	)	**Proceeding to Assess a Class II Civil Penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g).**
	)	
Ex. 6.(Personal Privacy) [redacted]	)	
	)	
in his individual capacity	)	
	)	
Sigel, Illinois	)	
	)	
Respondents.	)	

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA"), and Respondents Ex. 6 (Personal Privacy) Pork, Inc. an Ex. 6.(Personal Privacy) [redacted] have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) 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* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g).

3. Respondents consent to the entry of this Consent Agreement and Final Order ("CAFO"), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

4. EPA and Respondents agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

STATUTORY AND REGULATORY BACKGROUND

5. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, *inter alia*, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.

10. 40 C.F.R. § 122.2 defines "waters of the United States" to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2 define the term "point source" to mean any discernible, confined and discrete conveyance including, but not limited to, concentrated animal feeding operations from which pollutants are or may be discharged.

12. Pursuant to 40 C.F.R. § 122.23(b)(1), an "animal feeding operation" is defined as a lot or facility where the following conditions are met:

(i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

13. Pursuant to 40 C.F.R. § 122.23(b)(4)(i), a "large concentrated animal feeding operation" is defined to include an animal feeding operation that stables or confines 2,500 or more swine each weighing greater than or equal to 55 pounds.

14. Pursuant to 40 C.F.R. §122.23(b)(2), a "concentrated animal feeding operation" includes an animal feeding operation that qualifies as a "large concentrated animal feeding operation."

15. Pursuant to 40 C.F.R. §§ 122.21(a) and 122.23(d)(1), the owner or operator of a concentrated animal feeding operation which discharges must seek coverage under an NPDES permit.

16. Pursuant to Section 402(b) of the CWA, 42 U.S.C. § 1342(b), EPA has approved the State of Illinois, through the Illinois Environmental Protection Agency, to administer the NPDES program, including the issuance of NPDES permits, in Illinois.

17. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation implementing a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

GENERAL ALLEGATIONS

18. Complainant alleges that Respondent Ex. 6 (Personal Privacy) Pork, Inc. is a corporation doing business in the State of Illinois, and is therefore a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. Complainant also alleges that Respondent Ex. 6.(Personal Privacy) an individual, is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

19. Complainant alleges that, at all times relevant to this Complaint Ex. 6 (Personal Privacy) Pork, Inc. operated a swine nursery and finishing facility located at Ex. 6 (Personal Privacy) Ex. 6 (Personal Privacy) (the "Facility").

20. Complainant alleges that Respondent Ex. 6.(Personal Privacy) is an owner of the real estate at Ex. 6 (Personal Privacy) Ex. 6 (Personal Privacy) that comprises the Facility. Complainant further alleges that as the President of Ex. 6 (Personal Privacy) Pork, Inc., Respondent Ex. 6.(Personal Privacy) was the

individual who made the decisions regarding the Facility's day-to-day operations, including the manner in which the Facility complied with the CWA.

21. Complainant alleges that, at all times relevant to this CAFO, Respondents had been or were stabling, confining, feeding or maintaining 2,500 or more swine each weighing over 55 pounds for a total of 45 days or more in a 12-month period at the Facility.

22. Complainant alleges that, at all times relevant to this CAFO, crops, vegetation, forage growth, or post-harvest residues were not sustained in the normal growing season over any portion of the Facility.

23. Complainant alleges that, at all times relevant to this CAFO, the Facility was an "animal feeding operation" as that term is defined by 40 C.F.R. § 122.23(b)(1).

24. Complainant alleges that, at all times relevant to this CAFO, the Facility was a "large concentrated animal feeding operation" as that term is defined by 40 C.F.R. § 122.23(b)(4)(i).

25. Complainant alleges that an unnamed perennial tributary ("Unnamed Tributary of Henry Creek") flows along the southern border of the Facility approximately 3.5 miles to Henry Creek. Henry Creek flows 1.8 miles to Green Creek and Green Creek flows 4.9 miles to the Little Wabash River. The Little Wabash River flows 196 miles to the Wabash River, which then flows 18 miles to the Ohio River.

26. The U.S. Army Corps of Engineers has designated the Little Wabash River as a traditional navigable water 15.8 miles from its confluence with the Wabash River and has designated the Wabash River as a traditional navigable water 441.9 miles from its confluence with the Ohio River. The Ohio River is a traditional navigable water.

27. Complainant alleges that the Unnamed Tributary of Henry Creek, Henry Creek, Green Creek, Little Wabash River, the Wabash River and the Ohio River are each a "navigable

water" and are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

28. Complainant alleges that, at all times relevant to this CAFO, activities in the production area of the Facility resulted in the generation of wastes including process wastewater, manure, urine, and feed waste.

29. Complainant alleges that the wastes described in Paragraph 28, and constituents thereof, are pollutants as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

30. Complainant alleges that, at all times relevant to this CAFO, Respondents did not have a permit under Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge of pollutants from the Facility.

Alleged Violations - Discharges without a Permit

31. Paragraphs 1 through 30 are re-alleged here as if set forth in full.

32. EPA personnel conducted inspections (the "EPA Inspections") at the Facility on July 10, 2012; November 13, 2012; and April 3, 2014.

33. Complainant alleges that, at the time of the July 10, 2012 EPA Inspection, the inspectors observed and documented a discharge of manure and process wastewater from the West Barn and its open pens and a second discharge of manure and process wastewater from the receiving pen. Both discharges ultimately emptied into a ditch which joined the perennial Unnamed Tributary of Henry Creek approximately 15 feet to the south.

34. Complainant alleges that at the time of the November 13, 2012 EPA Inspection, EPA inspectors observed and documented discharges of manure and process wastewater from the Compost Pile and the receiving pen. Manure and process wastewater flowed with precipitation

from the receiving pen and Compost Pile and then ultimately into the ditch which joined the perennial Unnamed Tributary of Henry Creek approximately 15 feet to the south.

35. Complainant further alleges that, on November 13, 2012, EPA inspectors observed and documented a discharge of manure and process wastewater from the open pens between Finishers Barn #3 and Finishers Barn #4. This discharge of manure and process wastewater eventually evacuated into the same ditch, which joined the perennial Unnamed Tributary of Henry Creek approximately 15 feet to the south.

36. Complainant alleges that during the April 3, 2014 EPA Inspection, EPA inspectors observed and documented a discharge of manure and process wastewater from the Compost Pile. The process wastewater flowed to the east and then the south to the perennial Unnamed Tributary of Henry Creek.

37. Also during the April 3, 2014 EPA Inspection, EPA inspectors observed and documented a discharge of manure and process wastewater from the open pens between Finishers Barn #3 and Finishers Barn #4. The manure and process wastewater flowed to a black pipe and from the black pipe into a ditch. The pollutants flowed through the ditch and into the perennial Unnamed Tributary of Henry Creek approximately 15 feet to the south.

38. Complainant additionally alleges that during the April 3, 2014 EPA Inspection, EPA inspectors observed and documented a discharge of process wastewater from spilled feed on the ground around the feed loading area and around and below the bulk bins. Process wastewater flowed through the ditch and then to the perennial Unnamed Tributary of Henry Creek approximately 15 feet to the south.

39. The manure and process wastewater discharged from the Facility to the Unnamed Tributary of Henry Creek described in paragraphs 33-38 above, contained "pollutants" as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

40. On the dates of the EPA Inspections, pollutants from the Facility were being discharged; thus, the Facility was acting as a "point source," as that term is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14) and 40 C.F.R. § 122.2.

41. The addition of pollutants to waters of the United States as described in paragraphs 33-38 above, is a "discharge of pollutants" as that term is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

42. On the dates of the EPA Inspections, Respondents did not have a permit under Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge of pollutants from the Facility.

43. Respondents' discharges of pollutants from the Facility to the Unnamed Tributary of Henry Creek without a permit are each violations of Section 301 of the CWA, 33 U.S.C. § 1311.

TERMS OF SETTLEMENT

Assessment and Payment of Penalty

44.. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondents agree to settle this matter for $27,000.

45. For the purposes of this proceeding, and pursuant to 40 C.F.R. § 22.18(b) and (c), Respondents: (a) admit that EPA has jurisdiction over the subject matter set forth in this CAFO; and (b) neither admit nor deny the allegations set forth in this CAFO.

46. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondents waive all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, their right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and their right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

47. Respondents must pay the $27,000 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 30 days after the effective date of this CAFO.

48. Respondents must send the check to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

49. This civil penalty is not deductible for federal tax purposes.

50. A transmittal letter, stating Respondents' names, complete address, and the case docket number must accompany the payment. Respondents shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the indicated address:

Regional Hearing Clerk
Planning and Management Division (R-13J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Sherry L. Estes
Associate Regional Counsel
Office of Regional Counsel (C-14J)
EPA, Region 5

77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Joan Rogers
Water Division (WC-15J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

51. Respondents' failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondents shall also be required to pay attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

52. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

OTHER MATTERS

53. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by email at the following valid e-mail addresses: estes.sherry@epa.gov (for Complainant), and Ex. 6 (Personal Privacy) [redacted] for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

54. This CAFO settles EPA's claims for federal civil penalties for the violations alleged in this CAFO.

55. Nothing in this CAFO relieves Respondents of the duty to comply with the CWA or other federal, state or local laws or statutes. Compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

56. This CAFO does not affect the rights of EPA or the United States to pursue injunctive or other equitable relief or criminal sanctions for any violations of law. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Facility is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.

57. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it. Respondents shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Site.

58. Each party agrees to bear its own costs and attorney's fees accrued in the course of this action.

59. Pursuant to 40 C.F.R. § 22.38, the State was notified of this proceeding and the other terms of this settlement.

60. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO pursuant to Section 309(g)(4)(A) and 40 C.F.R. § 22.45.

61. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Acting Regional Administrator or his designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

62. This CAFO and the Administrative Order On Consent, Docket No. V-W-16-AO-07, together constitute the entire agreement between the parties.

Ex. 6.(Personal Privacy)

[redacted]

Ex. 6 (Personal Privacy) Pork, Inc.

7-14-16
Date

Ex. 6.(Personal Privacy)

[redacted]

In His Individual Capacity

7-14-16
Date

Acting For Tinka G. Hyde, Director
Water Division
U.S. Environmental Protection Agency
Region 5

8/5/2016
Date

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Ex. 6 (Personal Privacy) **Pork, Inc. and** Ex. 6.(Personal Privacy)
Docket No. **CWA-05-2016-0020**

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REGION 5

FINAL ORDER

This CAFO is hereby approved. The Respondents are hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: Robert A. Kaplan
Robert A. Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

Dated: 9/22/16

Consent Agreement and Final Order
In the matter of: Ex. 6.(Personal Privacy)
and Ex. 6 (Personal Privacy) Pork, Inc., Sigel, Illinois
Docket Number: **CWA-05-2016-0020**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CWA-05-2016-0020**, which was filed on September 26, 2016, in the following manner to the following addressees: Ex. 6.(Personal Privacy)

Copy by E-mail to Respondent Ex. 6.(Personal Privacy)
President, Ex. 6 (Personal Privacy) Pork, Inc.

Copy by E-mail to Respondent Ex. 6.(Personal Privacy)
Ex. 6.(Personal Privacy) in his personal capacity:

Copy by E-mail to
Attorney for Complainant: Sherry L. Estes
estes.sherry@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 26, 2016

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5