UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

JUL 2 6 2019

CERTIFED MAIL -RECEIPT REQUESTED: 7015 1520 0003 4072 8074

Mr. Asa Porter Jr., President
New Mexico Feeding Company
7915 Amapola Rd., S.E.
Deming, NM 88031

Re: Administrative Compliance Order and Request for Information
Docket Number: CWA-06-2019-1783
Facility Number: NMG010066

Dear Mr. Porter:

This is to inform you that the U.S. Environmental Protection Agency (EPA) Region 6 received the New Mexico Feeding Company (facility) annual report for 2018 on February 8, 2019. EPA has reviewed the report and determined that additional information is needed to determine compliance with the Concentrated Animal Feeding Operation (CAFO) permit requirements. The annual report indicates that your facility generated 903.74 tons of manure in 2018 of which an estimated 844.98 tons were transferred or given away to other persons offsite. However, the annual report does not indicate whether the facility conducted any manure sampling and analysis, as required by the CAFO permit. Also, the annual report does not include information (names, telephone numbers and addresses) about the manure recipients.

The enclosed Administrative Order (AO) requires you to provide (1) information about the recipients of the manure (i.e., names, telephone numbers, and addresses), and (2) documentation that the recipients of the manure were provided with analytical data on the nutrient content of the manure, as required by the CAFO permit. EPA is committed to ensuring compliance with the requirements of the CWA, and my staff will assist you in any way possible.

Please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403, if you have any questions or need additional information.

Sincerely,

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

cc: Ms. Sarah Holcomb, Program Manager
Point Source Regulation Section
Surface Water Quality Bureau
New Mexico Environment Department
1190 South St. Francis Dr.
Santa Fe, NM 87502

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA-06-2019-1783
	§	
New Mexico Feeding Company,	§	
	§	
	§	
	§	
Respondent	§	Findings of Violation and Compliance Order/Request for Information
	§	
	§	
	§	
Facility Number: NMG010066	§	

1. STATUTORY AUTHORITY

The following Findings are made, and Request issued, pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA"), by Sections 308 and 309(a) of the Act, 33 U.S.C. §§ and 1318 and 1319(a). The Administrator delegated the authority to issue this Request to the Regional Administrator, Region 6, who further delegated such authority to the undersigned Director of the Enforcement and Compliance Assurance Division, Region 6.

Section 308(a) of the Act, 33 U.S.C. § 1318(a) provides that: "Whenever required to carry out the objective of this Act, including but not limited to . . . determining whether any person is in violation of any . . . limitation, prohibition . . . or standard of performance . . . the Administrator shall require the owner or operator of any point source to . . . provide such other information as he may reasonably require." Failure to fully and truthfully respond to this Information Request or to adequately justify a failure to respond, can result in an EPA enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319. Section 309 authorized EPA to seek civil penalties up to $54,833 for each day of continued noncompliance with the Act. Furthermore, the provision of false, fictitious, fraudulent statements or representations may subject New Mexico Feeding Company and any of its employees responding to this Request to criminal penalties under 18 U.S.C. § 1001.

II. FINDINGS OF FACT

1. New Mexico Feeding Company ("Respondent"), is a company incorporated under the laws of the State of New Mexico, and is therefore, a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant to the violations alleged herein ("relevant time period"), Respondent operated a feedlot facility located on County Road 8037, 0.4 miles east of Highway 549 in Luna County ("facility"). The facility is a Concentrated Animal Feeding Operation ("CAFO") as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.23(b) and was assigned Permit Number NMG010066 by EPA Region 6.

3. As required by the facility's CAFO permit, the facility submitted to EPA Region 6 its annual report for the year 2018.

4. The annual report indicates that the facility generated 903.74 tons of manure of which an estimated 844.98 tons were transferred to other persons offsite. However, the annual report does not indicate whether the facility conducted any manure sampling and analysis, as required by the CAFO permit. Part III(C) of the CAFO permit (Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons) requires the Respondent to:

a. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;

b. Record the names, telephone numbers, and addresses of the recipient of the transferred manure, litter or process wastewater;

c. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and

d. Retain all records on-site, for a period of five (5) years, and submit to the permitting authority any requested records.

III. REQUEST FOR INFORMATION

5. Based on the foregoing Findings of Fact and pursuant to the authority vested in the Administrator under Section 308(a)(4)(A) of the Act, 33 U.S.C. § 1318 (a)(4)(A), Respondent shall submit the following information to EPA within thirty (30) days of the effective date of the Order:

a. The dates when manure was transferred from the facility in 2018 and the quantities of manure transferred each day.

b. The names, telephone numbers, and addresses of the recipients of the transferred manure, and

c. Analytical data showing the nutrient content of the transferred manure.

A. Certification

The information provided shall be verified by, and submitted under an authorized signature by a responsible corporate officer,[a] with the following certification:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

B. Confidential Information

You must provide the information requested even though you may contend that it includes confidential information. You may assert a business confidentiality claim covering all or part of the information requested in this information request, as provided in 40 C.F.R.§ 2.203(b). Please note that "effluent data" – as defined in 40 C.F.R. § 2.302(a)(2) – provided to EPA pursuant Section 308 of the Act, 33 U.S.C. § 1318, is not entitled to confidential treatment under 40 C.F.R. Part 2.

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[a] The term "responsible corporate officer," as used herein, means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

6. To assert a confidentiality claim, you must submit the requested information and indicate that you are asserting a claim of confidentiality. You must mark any document over which you assert a claim of confidentiality by attaching a cover sheet stamped or typed with a legend indicating your intent to claim confidentiality. The stamped or typed legend, or other suitable form of notice, should employ language such as "confidential" or "business confidential," and indicate a date, if any, when the information should no longer be treated as confidential. EPA will only disclose the information covered by such a claim to the extent permitted and by means of the procedures set forth in Section 308(b) of the CWA, 33 U.S.C. § 1318(b), and 40 C.F.R. Part 2. You must clearly identify allegedly confidential portions of otherwise non-confidential documents.

7. Please submit your response to this information request so that all non-confidential information, including any redacted versions of documents, is in one package and all materials for which you desire confidential treatment are in another package. EPA will construe the failure to furnish a confidentiality claim with your response as a waiver of that claim, and the information may be made available to the public without further notice to you. All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent.

8. If you assert a confidentiality claim for any of the information you submit to EPA, you bear the burden of substantiating that claim. EPA will give conclusory allegations little or no weight in its determination. For each document or response, you claim confidential, you must separately address the following points:

a. The portions of the information alleged to be entitled to confidential treatment;

b. The period of time for which confidential treatment is desired (*e.g.*, until a certain date, until the occurrence of a specific event, or permanently);

c. Measures taken by you to guard against the undesired disclosure of the information to others;

d. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

e. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

f. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

9. Finally, EPA may disclose information which you submit in response to this information request to authorized representatives of the United States pursuant to 40 C.F.R. § 2.302(h) even if you assert that all or part of the information is confidential business information. Please be advised that EPA may disclose all responses to this information request to one or more private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this information request. If you are submitting information which you assert is entitled to confidential treatment, you may comment on this potential disclosure to authorized representatives when you submit your response to this information request.

10. The information submitted will be considered in any further evaluation of the nature and extent of the Respondent's compliance with the CAFO permit. Section 309 of the Act, as amended by the Water Quality Act of 1987, provides civil and criminal penalties for failure to submit information required under Section 308 and criminal penalties for knowingly making a false statement under Section 308.

11. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. R § 3501, et. seq., as described in 5 C.F.R. § 1320.3(c). The effective date of this Request shall be the date it is received by the Respondent.

JUL 2 6 2019
Date

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division