

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

**ISE AMERICA, INC.
P.O. Box 267
Galena, MD 21635-0267**

Respondent.

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:
: U.S. EPA Docket No. CWA-03-2020-0113
:
: Proceeding to Assess Class II
: Administrative Penalty Under
: Section 309(g) of the Clean Water Act
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CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and ISE America, Inc. (“Respondent”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant’s civil penalty claims against Respondent under the Act for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any National Pollutant Discharge Elimination System ("NPDES") permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.
14. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any

NPDES permit condition or limitation after November 2, 2015 where the penalty is assessed on or after January 13, 2020, the maximum administrative penalty per day for each day of violation is up to \$22,320, up to a total penalty amount of \$278,995. (Part 19 also specifies the maximum penalties applicable to other time periods.)

15. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
16. Section 402 of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits in Maryland on September 5, 1974. On September 30, 1991, EPA authorized MDE to issue general NPDES permits.
18. Section 502(12) of the Act defines “discharge of a pollutants,” as, among other, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
19. Section 502(6) of the Acts defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharges into water.” 33 U.S.C. § 1362(6).
20. Section 502(14) of the Act defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
21. Section 502(5) of the Act defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
22. “Animal feeding operation” or “AFO” means, among other things, a lot or facility where:
 - a. Animals (other than aquatic 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
 - b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).

23. “Concentrated Animal Feeding Operation” or “CAFO” means an AFO that is defined, among others, as a Large CAFO. 40 C.F.R. § 122.23(b)(2).
24. “Large CAFO” means, among other things, an AFO that stables or confines more than:
 - a. 82,000 laying hens if an AFO uses other than a liquid manure handling system; or
 - b. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system. C.F.R. § 122.23(b)(4).
25. “Land application area” means land under the control of an AFO owner or operator, whether it is owned, rented, leased, to which manure, litter, or process wastewater from the production area is or may be applied. 40 C.F.R. § 122.23(b)(3).
26. “Process wastewater” means water directly or indirectly used in the operations of the AFO including, among others, water which comes in direct contact with any raw materials, products or byproducts such as manure, litter, or eggs. 40 C.F.R. § 122.23(b)(7).
27. “Production area” means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area and the waste containment storage areas. 40 C.F.R. § 122.23(b)(8).
28. Pursuant to 40 C.F.R. § 122.23(d), a CAFO must not discharge unless the discharge is authorized by an NPDES permit.
29. Pursuant to 40 C.F.R. § 122.23(e), a land application discharge is a point source discharge subject to the NPDES permit requirements, unless it is an agricultural stormwater discharge.
30. Pursuant to 40 C.F.R. § 122.23(e), a precipitation-related discharge of manure, litter and process wastewater from land areas under the control of CAFO is an agricultural stormwater discharge when the manure, litter or process wastewater have been applied in accordance to site-specific nutrient management practices that ensure properly agricultural utilization of the nutrients as provided in 40 C.F.R. § 122.42(e)(1)(vi)-(ix).
31. Pursuant to the authority of the Act, the NPDES program approval, and the laws of Maryland, Maryland issued General Discharge Permit for Animal Feeding Operations, NPDES Permit No. MDG01, Maryland Permit No. 9AF (“the 2009 Permit”). The effective date of the 2009 Permit was December 1, 2009, and the expiration date was November 30, 2014.
32. Maryland reissued General Discharge Permit for Animal Feeding Operations, NPDES Permit No. MDG01, Maryland Permit No. 14AF (“the 2014 Permit”). The effective date of the Permit was December 1, 2014, with an expiration date of November 30, 2019.
33. In 2016 Maryland modified the 2014 Permit. The modified permit, NPDES Permit No. MGD01A, Maryland Permit No. 14AFA (“the 2016 Permit”), became effective on August 1,

2016 and expired on November 30, 2019.

34. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
35. Respondent owns and operates the following facilities in Maryland:
 - a. Company 2 Layers, located on or about 33265 Walnut Tree Road, Millington;
 - b. Company 2 Pullets, located on or about 10782 Big Stone Road, Millington;
 - c. Company 6 Layers, located on or about 1526 Cecilton-Warwick Road, Cecilton;
 - d. Company 15 Layers, located on or about 605 Sassafras Road, Warwick; and
 - e. Company 15 Pullets, located on or about 680 Ward Hill Road, Warwick.
36. All of Respondent's facilities listed above are AFOs within the meaning set forth at 40 C.F.R. § 122.23(b)(1) because the facilities confine and feed or maintain animals over 45 days in a 12-month period where no crops or vegetations are sustained in the normal growing season.
37. All of Respondent's facilities listed above are CAFOs within the meaning set forth at 40 C.F.R. § 122.23(b)(4) because:
 - a. Company 2 Layers, Company 6 Layers and Company 15 Layers confine and feed more than 82,000 laying hens and use other than a liquid manure handling system; and
 - b. Company 2 Pullets and Company 15 Pullets confine and feed more than 125,000 chickens (other than laying hens) and use other than a liquid manure handling system.
38. Potential discharges from Respondent's CAFOs identified in Paragraph 37, above, flow into a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
39. Respondent submitted a Notice of Intent (NOI) to be covered by the 2009 Permit for the discharges from the five CAFOs listed above to MDE, signed by Respondent on June 20, 2011 and received by MDE on July 12, 2011.
40. On June 9, 2014, MDE acknowledged coverage under the 2009 Permit for all of Respondent's five CAFOs.
41. On September 25, 2014, Respondent submitted requests to MDE to continue coverage under the 2009 Permit for discharges from its five CAFOs listed above.

42. On January 30, 2015, Respondent submitted Notices of Intent (NOI) to MDE to be covered by the 2016 Permit for the discharges from its five CAFOs listed above.
43. On October 5, 2015, MDE acknowledged coverage under the 2014 Permit for all of Respondent's five CAFOs.
44. On September 26, 2019, Respondent submitted requests to MDE to continue coverage under the 2016 Permit for discharges from its five CAFOs listed above.
45. Respondent's NOIs to be covered by the 2009 and 2014 Permit for the discharges from all five of its CAFOs stated that all litter, manure and wastewater would be transported offsite.
46. Respondent's requests to continue coverage under the 2016 Permit for discharges from Company 2 Layers, Company 6 Layers, and Company 15 Layers stated that all manure would be transported offsite and that all process wastewater would be land applied.
47. Part I.B.1 of the 2009, 2014 and 2016 Permits authorizes discharges via application of animal waste, including process wastewater, to the soil if such application is performed in accordance with an approved nutrient management plan.
48. CAFO owners or operators must submit to MDE required plans, consisting of either a Comprehensive Nutrient Management Plan (CNMP) or both a Nutrient Management Plan (NMP) and a Conservation Plan (collectively the "Plans"). Part II.S of the 2009, 2014 and 2016 Permits.
49. The 2009, 2014 and 2016 Permits requires the CAFO to implement the required Plans. Part III.A.3 of the 2014 and 2016 Permits; Part III.B.3 of the 2009 Permit.
50. Part II.Z. of the 2009, 2014 and 2016 Permits states that process wastewater includes, *inter alia*, water that comes into contact with any raw materials, products or by products, including manure, litter, feed, milk, eggs or bedding.
51. The production area of a CAFO includes, *inter alia*, the manure storage area, such as storage sheds, stockpiles, etc. Part II.AA. of the 2009, 2014 and 2016 Permits.
52. The 2009, 2014 and 2016 Permits prohibit discharges from the CAFO production areas unless the discharge results from a storm event greater than a 25-year 24-hour storm. Part I.B.2.
53. Part IV.A.6. of the 2009, 2014 and 2016 Permits require that the permittee maintain a land application logbook to keep data describing all land application of process wastewater.
54. The logbook must include, *inter alia*, data for each day that land application occurs, the field where the process wastewater was applied, the application method, rate, time and date, and weather and soil conditions. Part IV.A.6(a) of the 2009, 2014 and 2016 Permits.

55. The 2014 and 2016 Permits require that if the operations in the CAFO change from no-land to land application, the permittee must submit a new NOI and revised required plans. Part IV.F. of the 2014 and 2016 Permits. The 2009 Permit requires that the permittee submit a new NOI for any changes requiring an updated required plan. Part IV.F. of the 2009 Permit.
56. A permittee for a no-land application CAFO cannot apply process wastewater to fields under its control and must export the animal waste to an operation that is not under the control of the CAFO's operator. Part IV.F.1.d.i. of the 2014 and 2016 Permits.
57. The 2009, 2014 and 2016 Permits require that permittees submit an annual report with daily data collected as well as additional information including the amount of total manure, litter and process wastewater generated the previous year, the amount of waste that was land applied, the amount of waste transported offsite by recipient, and the amount of freeboard in the impoundment on the same day of each month for those operations that with liquid impoundments. Part V.C.2. of the 2009, 2014 and 2016 Permits.
58. On March 23, 2018, representatives of EPA Region III, accompanied by representatives of MDE and the Maryland Department of Agriculture, conducted an inspection at Respondent's Company 15 Layers.
59. EPA prepared an inspection report dated July 12, 2018 which included observations made by EPA representatives during the inspection as well as observations regarding Respondent's compliance with the requirements of the 2014 and 2016 Permits.
60. EPA sent a copy of the Inspection report to the Respondent on July 12, 2018.
61. On September 27, 2018, EPA sent a Notice of Noncompliance (NON) to Respondent that identified permit violations that were observed during the March 23, 2018 inspection.
62. On September 27, 2018, pursuant to Section 308 of the CWA, EPA requested information and documents from Respondent to obtain further clarification on Respondent's compliance with the NPDES permit requirements for CAFOs ("308 Request").
63. Respondent provided EPA with information and documents in response to EPA's 308 Request on November 19, 2018 and December 18, 2018.

Count I

Respondent violated the applicable permit when it land applied process wastewater at the Company 2 Layers, Company 6 Layers and Company 15 Layers facilities which were permitted as no-land application CAFOs.

64. The allegations of Paragraphs 1 through 63 of this Consent Agreement are incorporated herein by reference.

65. Prior to the submittal of Respondent's NOIs on September 26, 2019 for coverage under the 2016 Permit, all five of Respondent's CAFOs were identified by Respondent as no-land application facilities.
66. In response to EPA's 308 Request, Respondent provided its Comprehensive Nutrients Management Plan, signed by the Respondent on January 16, 2014, and its Nutrient Management Plan, updated March 5, 2018.
67. Respondent's CNMP covers all five of the CAFOs listed in Paragraph 35, above.
68. The CNMP provides that wastewater from egg washing from the three layer facilities is to be collected in earthen impoundments, and then exported and spray irrigated on cropland operated by another farmer and not operated by the Respondent. CNMP at 40-41, 141-142, 144.
69. The CNMP provides that the operations of these facilities don't include any fields for land application. CNMP at p. 65. See also NMP, indicating that the NMP is for total export facilities.
70. At all times relevant to the violations alleged herein, the areas where the wastewater was being land applied at the three layer facilities was "under the control" of Respondent as such term is defined in 40 C.F.R. 122.23(b)(3).
71. From at least January 1, 2015 until September 26, 2019, Respondent land applied via spray irrigation wastewater from the egg washing process on at least 15 separate occasions at the three layer facilities "under the control" of the Respondent.
72. From at least January 1, 2015 until September 26, 2019, Respondent did not submit new NOIs and revised plans for land application activities for Company 2 Layers, Company 6 Layers and Company 15 Layers.
73. Respondent's acts and/or omissions as alleged in Paragraphs 71 and 72, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count II

Respondent failed to maintain storage structure documentation

74. The allegations of Paragraphs 1 through 73 of this Consent Agreement are incorporated herein by reference.
75. The 2014 and 2016 Permits require permittees to document the total design storage volume and the days of storage capacity of wastewater storage structures, whether the permittee land applies or exports the wastewater. Parts IV.A.6.c(5) and IV.A.7.a(4) of the 2014 and 2016 Permits.

76. From at least March 23, 2018 until November 19, 2018, Respondent failed to document the total design storage volume of wastewater storage structures for Company 2 Layers, Company 6 Layers and Company 15 Layers as required under Parts IV.A.6.c(5) and IV.A.7.a(4) of the 2014 and 2016 Permits.
77. Respondent's acts and/or omissions as alleged in Paragraph 76, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count III

Respondent failed to conduct or document weekly inspection of stormwater routing structures

78. The allegations of Paragraphs 1 through 77 of this Consent Agreement are incorporated herein by reference.
79. The 2014 and 2016 Permits require that the permittee document weekly inspections of storm water routing structures in a logbook, whether the permittee land applies or exports the wastewater and maintain such records for a period of five years. Parts IV.A.6.b(5), IV.A.7.a(6), and Part IV.B.9 of the 2014 and 2016 Permits.
80. From at least January 1, 2015 until November 19, 2018, Respondent failed to conduct or document weekly inspections of the storm water routing structures at its five CAFO facilities as required under Parts IV.A.6.b(5) and IV.A.7.a(6) of the 2014 and 2016 Permits.
81. Respondent's acts and/or omissions as alleged in Paragraph 80, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count IV

Respondent failed to conduct or document weekly inspection of the liquid animal waste impoundments

82. The allegations of Paragraphs 1 through 81 of this Consent Agreement are incorporated herein by reference.
83. The 2014 and 2016 Permits require that the permittee document weekly inspections of the liquid animal waste impoundments in a logbook, whether the permittee land applies or exports the wastewater. Parts IV.A.6.b(4) and IV.A.7.a(5) of the 2014 and 2016 Permits.
84. Part IV.B.9 of the 2014 and 2016 Permits states: "Maintain all records necessary to document the development and implementation of the NMP and Conservation Plan and all other requirements of Parts IV and V of this permit. These records shall be maintained for five years."

85. From at least January 1, 2015 until November 19, 2018, Respondent failed to conduct or document weekly inspections of the liquid animal waste impoundments at its five CAFO facilities as required under Parts IV.A.6.b(4) and IV.A.7.a(5) of the 2014 and 2016 Permits.
86. Respondent's acts and/or omissions as alleged in Paragraph 85, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count V

Respondent failed to conduct or document inspections of dry manure storage

87. The allegations of Paragraphs 1 through 86 of this Consent Agreement are incorporated herein by reference.
88. The 2014 and 2016 Permits require that the permittee document inspections of the animal waste storage areas for dry animal waste operations in a logbook, whether the permittee land applies or exports the wastewater. Parts IV.A.6.b(4) and IV.A.7.a(5) of the 2014 and 2016 Permits.
89. Part IV.B.9. of the 2014 and 2016 Permits states: "Maintain all records necessary to document the development and implementation of the NMP and Conservation Plan and all other requirements of Parts IV and V of this permit. These records shall be maintained for five years."
90. From at least January 1, 2015 until November 19, 2018, Respondent failed to conduct or document inspections of the liquid animal waste impoundments at its five CAFO facilities as required under Parts IV.A.6.b(4) and IV.A.7.a(5) of the 2014 and 2016 Permits.
91. Respondent's acts and/or omissions as alleged in Paragraph 90, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count VI

Respondent failed to maintain records for either land application of process wastewater, or in the alternative for the export of process wastewater

92. The allegations of Paragraphs 1 through 91 of this Consent Agreement are incorporated herein by reference.
93. Part IV.A.6.a of the 2014 and 2016 Permits requires that permittees, which land apply process wastewater, maintain in a land application logbook available for inspection and maintained on-site for a period of five years with the data describing land application animal waste including: the fields in which the animal waste was applied; the application method, rate, time and date; and the soil and weather conditions.

94. Part IV.A.6.c(3) of the 2014 and 2016 Permits require that the permittee that land applies animal waste keep a record of the amount of nitrogen and phosphorus actually applied to each field, including the calculations for the total amount applied.
95. Part IV.A.7 of the 2014 and 2016 Permits require that the permittee that exports manure, litter, or process wastewater shall maintain a no-land operation logbook available for inspection on-site for a period of five years with the name and address of each recipient and the date and quantity of animal wastewater transferred to such recipient.
96. From at least January 1, 2015 until September 26, 2019, Respondent land applied via spray irrigation wastewater from the egg washing process on at least 15 separate occasions at the three layer facilities “under the control” of the Respondent that were not authorized for wastewater land application under Respondent’s 2014 and 2016 Permits.
97. From at least January 15, 2015 until September 26, 2019, Respondent failed to maintain in a land application logbook at its the three layer facilities available for inspection the data describing land application animal waste including: the fields in which the animal waste was applied; the application method, rate, time and date; and the soil and weather conditions as required under Part IV.A.6.a of the 2014 and 2016 Permits.
98. From at least January 15, 2015 until September 26, 2019, Respondent failed to maintain a record of the amount of nitrogen and phosphorus actually applied to each field, including the calculations for the total amount applied as required under Part IV.A.6.c(3) of the 2014 and 2016 Permits.
99. Respondent’s acts and/or omissions as alleged in Paragraphs 96 through 98, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count VII

Respondent’s impoundments storing liquid animal waste did not have depth markers

100. The allegations of Paragraphs 1 through 99 of this Consent Agreement are incorporated herein by reference.
101. Part IV.A.2 of the 2014 and 2016 Permits require that any impoundment storing liquid animal waste be equipped with a depth measuring device visible from the outside or back of the storage area, and that indicates the maximum depth as which a 25 year 24-hour storm can be contained.
102. At the time of the March 23, 2018 inspection, Respondent’s Company 15 Layers facility process wastewater impoundment did not have a depth maker.

103. Respondent's acts and/or omissions as alleged in Paragraph 102, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count VIII

Respondent failed to prevent polluted runoff from dry manure storage pile

104. The allegations of Paragraphs 1 through 103 of this Consent Agreement are incorporated herein by reference.
105. Part IV.B.1. of the 2014 and 2016 Permits require that the permittee store dry manure in a way that prevents polluted runoff.
106. At the time of the March 23, 2018 inspection, Respondent's Company 15 Layers facility had multiple uncovered manure stock-piles in the production areas at the facility.
107. At the time of the March 23, 2018 inspection, Respondent's Company 15 Layers facility had process wastewater, consisting of runoff from two uncovered manure stockpiles, on the ground and draining toward the vegetated swales that flow into the sediment basins of the facility.
108. Respondent's acts and/or omissions as alleged in Paragraphs 106 and 107, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

Count IX

Respondent did not file complete annual reports

109. The allegations of Paragraphs 1 through 108 of this Consent Agreement are incorporated herein by reference.
110. Parts V.C. and V.D. of the 2014 and 2016 Permits require that the permittee submit an annual report by March 1st for the previous year, with specified information, including the estimated amount of manure, litter and process wastewater generated, the amount that was land applied, the amount that was transported offsite, the amount of free board in any liquid impoundment every month, and the total numbers of acres used for land application.
111. From at least 2014 until 2017, Respondent's annual reports for 2014-2017 calendar years for the three layers facilities did not include information on the amount of liquid waste collected at such facilities, or whether such liquid waste was exported or land applied.
112. Respondent's acts and/or omissions as alleged in Paragraph 111, above, constitute violations by Respondent of the 2014 and 2016 Permit requirements and therefore such acts are subject to the assessment of civil penalties pursuant to Section 309(g)(2)(B) of the Act.

CIVIL PENALTY

113. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of One Hundred Thirty Seven Thousand (\$137,000) Dollars, which Respondent shall be liable to pay in accordance with the terms set forth below.
114. The civil penalty assessed in this Consent Agreement and Final Order is based upon EPA's consideration of a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, which reflects the statutory penalty criteria and factors set forth at Section 309(g) of the Act, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
115. Payment of the settlement amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **U.S. EPA Docket No. CWA-03-2020-0113**
 - b. All checks shall be made payable to the "United States Treasury"
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the settlement amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent's check or other documentation of payment of the settlement amount using the method selected by Respondent for payment shall be sent simultaneously to:

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)

1650 Arch Street
Philadelphia, PA 19103-2029
Ramalho.Louis@epa.gov

116. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the settlement amount as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
117. Payment of the settlement amount is due and payable immediately upon the effective date of the Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt as of the effective date of this Consent Agreement and Final Order or the date of receipt, whichever is later, of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
118. Interest on the settlement amount will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the settlement amount that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
119. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the settlement amount remains unpaid.
120. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the settlement amount that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
121. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

122. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of

Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

123. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

124. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on Consent between Respondent and EPA, Docket No. CWA-03-2020-0117DN, which addresses the violations alleged herein.

OTHER APPLICABLE LAWS

125. By signing this Consent Agreement, Respondent neither admits or denies the allegations contained in this Consent Agreement, but Respondent consents to the settlement stated herein. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

126. This Consent Agreement and Final Order resolves only EPA's claim for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*,

the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

127. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, and the Respondent and its successors or assigns. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

128. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, filed with the Regional Hearing Clerk, and served on Respondent by certified mail, or ten (10) days after conclusion of the public notice and comment period described in 40 C.F.R. § 22.45(b), whichever is later.

ENTIRE AGREEMENT

129. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all of EPA's claims under the CWA pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

ISE America, Inc.

Date: Aug. 4, 2020

By: Denise Ford
Denise Ford
Vice President - Northeast Operations
and Admin

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____
Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA – Region III