

**United States Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219**

**Certification under Section 401(a)(1) of the Clean Water Act  
Tom Reppert Livestock CAFO  
1245 M Avenue  
Pender, NE 68047  
NPDES Permit No. NE0136603**

The Tom Reppert Livestock concentrated animal feeding operations (CAFO) is located within the exterior boundaries of the Omaha Tribe of Nebraska Tribal Reservation. The Omaha Tribe of Nebraska is a federally recognized Indian Tribe. The Environmental Protection Agency (EPA), Region 7 is issuing a National Pollutant Discharge Elimination System (NPDES) Permit No. NE0136603, under Section 402 of the Clean Water Act (CWA), to the Tom Reppert Livestock CAFO. This NPDES permit authorizes conditional discharge of wastewater effluent to the waters of the United States, within the exterior boundaries of the Omaha Tribe of Nebraska Tribal Reservation. The Omaha Tribe of Nebraska is the homeland of the Tribe and is Indian Country located within the State of Nebraska.

Section 401 of the CWA, (Public Law 95-217) as amended in 1977, requires that an applicant for a federal permit, such as an NPDES permit, must obtain certification that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. Presently, the Omaha Tribe of Nebraska does not have EPA-approved water quality standards or Section 401 authority for the purpose of regulating water resources within the borders of an Indian reservation, pursuant to Section 518(e) of the CWA. The CWA states in part that in any case where a state, interstate agency, or Tribe has no authority to issue a water quality certification, such certification shall be issued by the EPA. In determining water quality standards for certification under Section 401 of the CWA, the EPA considers any tribal, federal, and/or adjacent state standards, and any EPA guidance for the water quality standards program such as water quality criteria published under Section 304(a) of the CWA and the Water Quality Standards Handbook. The EPA also consults with affected federally recognized Indian tribes regarding their concerns, when evaluating projects for certification under Section 401 of the CWA.

On June XXX, 2020, the EPA sent a letter, including the draft NPDES Permit, the draft Statement of Basis, and the draft CWA Section 401 Certification, to the Omaha Tribe of Nebraska Tribal Chairman, offering the Tribe the opportunity to consult with the Agency on the draft NPDES Permit and enclosed associated documents and/or to review the draft Permit and associated documents and provide any comments to the Agency. On June XXX, 2020, the EPA sent letters, including the draft NPDES Permit and the draft Statement of Basis, to the Nebraska Dept. of Environmental Quality, the US Fish and Wild Life Service, the US Indian Health Service, the Nebraska Game and Parks Commission, and the Nebraska State Historical Society requesting comments. On August XXX, 2020, the EPA published a public notice in the Pender Times newspaper, informing the public about the proposed Tom Reppert Livestock CAFO NPDES Permit and providing a thirty-day public comment period. After the public comment period, the EPA addressed any comments received and subsequently finalized the NPDES Permit.

On the basis of the final NPDES Permit and Statement of Basis for the Tom Reppert Livestock CAFO, and as provided under Section 401(a)(1) of the CWA, EPA certifies that NPDES Permit No. NE0136603 complies with the applicable provisions of the CWA, including Sections 301, 302, 303, 306, and 307. The Certification provided herein assures that the discharges that are in compliance with the effluent limitations and conditions of the NPDES Permit will not violate any applicable water quality standards and/or effluent guidelines or standards.

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Jeff Robichaud, Director Water Division

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Date