

REPORT OF CONCENTRATED ANIMAL FEEDING OPERATION INSPECTION

AT

NextGen at Allen DBA 2i Feeders, LLC.
884 Road 350
Allen, Kansas 66833
(620)528-3740
NPDES Permit #KS0092177

ON

May 22, 2023

BY

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region VII
Enforcement and Compliance Assurance Division

1.0 INTRODUCTION

At the request of the Enforcement and Compliance Assurance Division, Water Branch, a Concentrated Animal Feeding Operation (CAFO) inspection was performed at the NextGen at Allen DBA 2i Feeders, LLC. facility on May 22, 2023. This inspection was performed pursuant to Section 308(a) of the Federal Water Pollution Control Act, as amended. This narrative report and attachments present the findings and observations made during the inspection.

2.0 PARTICIPANTS

NextGen at Allen DBA 2i Feeders, LLC.
Chad Holloway, Manager
Ashely McKenny, Office Manager

Bartlett & West (Consultant)
Daniel Berges, Senior Project Engineer

Kansas Department of Health and Environment (KDHE)
Jacob Zortman, Engineering Associate, Livestock Waste Management
Casey Guccione, Section Chief, Livestock Waste Management

U.S. Environmental Protection Agency (EPA)
Lorenzo Sena, Physical Scientist (913) 551-5094 (Lead Inspector)
Adam Hendrickson, Physical Scientist (913) 551-7253

3.0 INSPECTION PROCEDURES

I attempted to contact Mr. Chad Holloway at 8:00am on Monday, May 22, 2023, I was unable to speak with him but was able to speak with Ms. Ashely McKenny. I explained my intentions and asked if she could have Mr. Holloway contact me so I could set up a time for an inspection at the NextGen at Allen DBA 2i Feeders, LLC. (NextGen) facility later that day. Shortly after, I was contacted by Mr. Daniel Berges who informed me that Mr. Holloway was out of town and would not be able to meet with me but said he could meet me for the inspection. I proposed to meet at the facility at 12:00 pm and Mr. Berges agreed to that time.

Prior to performing the inspection, Mr. Adam Hendrickson and I conducted a visual reconnaissance of the facility, searching for areas of concern observable from the county roads such as discharges, drainage patterns, flow directions, distance and direction of nearest perennial waters, visual condition of perennial waters, facility location, and layout. The facility is located approximately 2 miles northwest of the town of Allen Kansas along Road 350. The area surrounding the feedlot and the commodities area flows approximately 3.7 miles southwest through an unnamed tributary to Allen Creek to the point where the unnamed tributary enters Allen Creek. Allen Creek flows south approximately 28 miles to the point where it combines with the Neosho River. Allen Creek and portions of the unnamed tributary to Allen Creek were flowing at the time of the inspection (see Appendix #1).

I arrived at the NextGen facility at approximately 12:00 p.m. and was met by Mr. Berges. I was accompanied by Mr. Hendrickson (EPA Region 7), Mr. Jacob Zortman (KDHE) and Mr. Casey Guccione (KDHE). I presented my credentials to Mr. Berges and explained that Mr. Hendrickson was an inspector in training. After introductions, I explained the purpose of the inspection and the procedures I would follow during the inspection.

I made Mr. Berges aware of the facilities confidentiality rights and informed him that a Confidentiality Notice, which he reviewed, would be provided to Mr. Holloway. During the facility walk through, Mr. Berges acted as the official facility representative during the inspection, and provided the majority of the information pertaining to the facility's operation and accompanied us during the visual inspection of the facility. On May 31, 2023 at 9:52am, I spoke with Mr. Holloway, I explained his confidentiality rights, the purpose and procedures of the inspection and completed the General CAFO inspection Checklist included as Appendix #2.

I explained to Mr. Berges that I would be conducting the CAFO inspection under the authority of Section 308(a) of the Federal Water Pollution Control Act to evaluate the facility's compliance status with the requirements of the Clean Water Act (CWA). I explained that the inspection would consist of a review of facility operations, required records, waste generation and management practices, and a visual inspection of the facility.

I conducted this inspection in accordance with the most current procedures described herein and the following EPA Region VII Standard Operating Procedures (SOPs), unless otherwise noted:

SOP No.
2332.09

Bio-Security Procedures for Conducting NPDES Compliance
Evaluations at Animal Feeding Operations

I completed my inspection on May 22, 2023, and I summarized the findings and recommendations with Messrs. Holloway and Berges. Following our phone conversation, Mr. Holloway acknowledged receipt of the Confidentiality Notice, which he signed indicating no confidential business information had been provided during the inspection (Appendix #3). No samples were taken during the inspection, and I emailed a Notice of Preliminary Findings (NOPF) to Mr. Holloway on May 31, 2023 at 11:46am. I received a copy of the signed NOPF form on June 2, 2023 (Appendix #4). 35 photographs were taken during the facility inspection and are included as Appendix #5. Appendix #6 shows the facility layout as well as runoff flow paths and photo locations.

See Appendix #7 for the completed entry/exit briefing checklist and see Appendix #2 for the EPA Region VII General CAFO Inspection Form which includes inspection notes.

Following the inspection, I received a response to the NOPF from the facility, the response is included as Appendix #8.

4.0 FACILITY DESCRIPTION

4.1 Facility Operations

NextGen is located approximately 2 miles northwest of the town of Allen Kansas along Road 350. The legal description for the facility is the SW 1/4 Section 9, S 1/2 Section 8, NE 1/4 Section 17, Township 16 S, Range 11 E, Lyon County, Kansas. The NPDES permit (Appendix #9) has an effective date of December 18, 2017 and has an expiration date of December 17, 2022. The facility did submit an application for renewal of the permit which, is included as Appendix #10. As a result, KDHE has administratively extended this permit.

Ms. McKenny stated that the facility has 8 full time employees and 3 part time employees. According to the facility inventory records, there were approximately 750 head of feeder cattle in the confinement pens. The facility is permitted for a total of 5,000 head of cattle over 700 pounds and 12,600 head of cattle under 700 pounds.

NextGen consists of approximately 98 acres of open confinement lots and extraneous areas used for the feeding of 5,000 head (5,000 animal units) of beef cattle weighing greater than 700 pounds and 12,600 head (6,300 animal units) of beef cattle weighing less than 700 pounds. A facility diagram provided by Mr. Berges is included as Appendix #11. This facility diagram dates back to 2004 and is slightly out of date but is for the most part correct.

The facility consists of 5 control areas and is supported by a waste management system consisting of diversions, sediment basins, and 5 waste storage ponds. The facility NPDES permit lists 6 areas within the facility based on where and how runoff from the facility is captured, these areas as well as the description from the permit are as follows:

Area 1 - is located in the central portion of the feedlot. It consists of approximately 12.3 acres of open lots and compost area and 5 acres of extraneous area for the feeding of

2,190 head. Runoff from precipitation in this area flows southwest through the pens into a sediment basin which precedes a single cell earthen retention structure (waste storage pond 1). Wastewater is transferred from the sediment basin to the waste storage pond via two 12-inch diameter riser outlets. Waste storage pond 1 is rectangular in shape and measures 200 by 280 feet at the inside top of berm and has a total depth of 12 feet. It has 3:1 inside slopes and provides 8.7 acre-feet of usable storage capacity at the freeboard level.

Area 2 - is located in the southeast area of the feedlot. It consists of approximately 20.7 acres of open lots and 1 acre of extraneous area for the feeding of 4,200 head. Runoff from precipitation in this area flows south through the pens into a sediment basin which precedes a single cell earthen retention structure (waste storage pond 2). Wastewater is transferred from the sediment basin to the waste holding pond via two 12-inch diameter riser outlets. Waste storage pond 2 is rectangular in shape with a 25 degree skew. It measures 385 by 400 feet at the inside top of berm, and has a total depth of 10 feet. It has 3:1 inside slopes and provides 21.2 acre-feet of usable storage capacity at the freeboard level. Wastewater can be pumped from waste storage pond 2 to a center pivot for land application.

Area 3 - is located in the northeast portion of the feedlot. It consists of approximately 17.5 acres of open lots and 3 acres of extraneous area for the feeding of 4,110 head. Proposed modifications include moving the existing containment diversion to capture precipitation runoff from the northeast pens. Wastewater from the northeast pens will then flow east into the sediment basin which precedes a single cell earthen retention structure (waste storage pond 3). Wastewater is transferred from the sediment basin into the storage pond via two 12-inch diameter riser outlets. Waste storage pond 3 is rectangular in shape with a 20 degree skew. It measures 237 by 397 feet at the inside top of berm, and has a depth of 10 feet. It has 3:1 inside slopes and provides 12.5 acre-feet of usable storage capacity at the freeboard level.

Area 4 - is located west of Area 1. Runoff from precipitation in this area flows southeast into a sediment basin which precedes a single cell earthen retention structure (waste storage pond 4). Waste storage pond 4 is rectangular in shape and measures 176 by 726 feet at the inside top of berm and has a depth of 12 feet. It has 4:1 inside slopes and provides 18.6 acre-feet of usable storage capacity at the freeboard level.

Area 5 - is located on the western edge of the feedlot. Runoff from precipitation flows southwest into a containment channel and sediment basin which precedes a single cell earthen retention structure (waste storage pond 5). Waste storage pond 5 is rectangular in shape and measures 200 by 280 feet at the inside top of berm and has a total depth of 12 feet. It has 3:1 inside slopes and provides 8.70 acre-feet of usable storage capacity at the freeboard level.

Commodity Storage Area – The facility NPDES permit describes a commodity area located across Road 350 and east of the facility. The previous commodity area was removed and a new commodities area was constructed directly across Road 350 from the facility. The new commodities area consists of a covered silage pile hay storage area and a grain storage building (see Appendix #5, Photos #32 to 35 and Appendix #6). Runoff

from this area is not controlled and the facility relies on minimizing the exposure of the feed stuffs to precipitation to reduce the amount of contaminated runoff leaving the area. From the feed commodities area, runoff flows southeast approximately 250 to 500 feet (depending on which portion the runoff emanates) across a grassy area to a small grassed drainageway which flows approximately ¼ mile to the point where it flows into the unnamed tributary to Allen Creek described earlier in this report.

4.2 CAFO Status

The facility is a permitted Concentrated Animal Feeding Operation (CAFO) and was issued an NPDES permit (#KS0092177). According to the NPDES permit (Appendix #9), the facility has a maximum capacity of 5,000 head (5,000 animal units) of beef cattle weighing more than 700 pounds, and 12,600 head (6,300 animal units) of beef cattle weighing less than 700 pounds. As mentioned above, according to the facility inventory records, there were approximately 750 head of feeder cattle at the time of the inspection. Cattle are confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The facility inventory records for the last year show the following maximum number of head each month for the past year:

Month	#of Head
May-22	7,459
Jun-22	9,728
Jul-22	7,198
Aug-22	8,914
Sep-22	6,382
Oct-22	4,100
Nov-22	3,574
Dec-22	2,419
Jan-23	888
Feb-23	322
Mar-23	1,345
Apr-23	2,569
May-23	2,692

As a result of my observations and the statements made by Messrs. Holloway and Berges, I determined that NextGen meets the definition of a large CAFO as it is defined in Title 40 of the Code of Federal Regulations, Part 122.23.

4.3 Regulatory History

Kansas Department of Health and Environment (KDHE) performed a Livestock Waste Compliance Inspection on September 29, 2022 (see Appendix #12). The inspection identified

numerous compliance issues. The issues identified during the KDHE inspection are in italics and the EPA observed (current) status of the facility follows:

1. Wastewater storage ponds/lagoons 1, 3, 4, and 5 lack the required available storage listed in Table 1 of the permit and must be dewatered as stated in Section B of the permit. Submit operational reports that document the return to compliance.

At the time of the inspection, Area 1/ Waste Storage Pond 1 was at a level of 5 feet of freeboard measured from the top of the berm (see Appendix #5 Photo #28). The facility NPDES permit Table 1 specifies an operating level of 10.5 feet of freeboard be maintained and that dewatering be initiated and conducted on all days suitable for land application.

At the time of the inspection, Area 3/ Waste Storage Pond 3 was at a level of 5 feet of freeboard measured from the top of the berm (see Appendix #5 Photo #6). The facility NPDES permit Table 1 specifies an operating level of 8.0 feet of freeboard be maintained and that dewatering be initiated and conducted on all days suitable for land application.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 1 – The facility is continuing to work to dewater wastewater lagoons #1 and #3. Both land application pivots were planted to triticale in fall 2022 and harvested for hay the week of May 28, 2023. Both pivots will be planted to corn (for silage) in early June. The facility will resume dewatering the lagoons as soon as the corn is planted.

Unfortunately, the large available storage capacity requirements for the lagoons (compared to their depths) makes it difficult to reach the required freeboard levels as most of the operational capacity is filled with sediment.

Ultimately, the facility needs additional storage capacity. The facility is currently in the early stages developing engineering plans for additional storage capacity either through enlarging or constructing additional storage lagoons. The goal is to have the engineering plans submitted to KDHE before October 1, 2023.

The remaining waste storage pond levels were as follows:

Waste Storage Pond	Permitted Operating Level	Level at the Time of the Inspection
2	6.0 Feet	6.0 Feet
4	8.0 Feet	8.0 Feet
5	8.5 Feet	9.0 Feet

2. Sediment basins are retaining wastewater and have collected excessive sludge. Lagoon 2 also has excessive sludge. Sludge must be removed from lagoon 2 and sediment basins, and sediment basins must be drained, by December 17, 2022. Document the work in comments section on submitted operational reports.

As mentioned above, the water levels in the wastewater lagoons were such that the sediment levels in the lagoons could not be visualized. Mr. Berges explained that the facility started removing solids on October 19, 2022 (after the KDHE inspection). He explained that sediment was removed from approximately 50 feet of the west side of Waste Storage Pond #2. He also said that sediment was removed from approximately 50 feet of the south side of Waste Storage Pond #3. He then explained that this continued until early November when the area received 3 inches of rain. The facility has not continued the solids removal.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 5 – The facility was making good progress on removing sludge from the wastewater lagoons in October 2022. Unfortunately, rains in early November stopped their progress. While the facility will continue to work to remove sludge, the plans for additional wastewater storage describing in Corrective Action 1 will ultimately allow the facility to manage the sludge in the lagoons within compliance of the permit.

3. Due to repeated violations of lack of available storage and sludge build up in lagoons and sediment basins; a plan to manage the lagoons and sediment basin within compliance of the permit must be developed and submitted to KDHE by December 17, 2022.

As of June 15, 2023, this information has not been submitted to KDHE.

4. By December 17, 2022:

-A post construction report must be submitted for completed portions of Areas 4 and 5 for the "proposed" facilities portion of the current permit.

-A post construction report must be submitted for the feed commodities location.

-A post construction report must be submitted for the changes made to direct far north pens to Area 3 lagoon.

As of June 15, 2023, this information has not been submitted to KDHE.

5. About 12 acres of old (stored over 18 months) composted material on site needs to be removed and land applied or otherwise disposed of. A plan to address this must be submitted by December 17, 2022. The plan must include a prompt timeframe by which the material will be removed.

During the facility walk through, I viewed and photographed the “old” compost pile, it can be seen in Appendix #5, Photos #19-22. As can be seen in the photos, the old compost is being screened and is being sold by a separate company.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 3 – The compost pile is being exported to Mr. Rusty Heins. Mr. Heins started screening the compost pile in early May and has access to several hundred acres of farmland. The exported waste will be documented on the Exported Waste Report of the Annual Report.

6. By December 17, 2022, the nutrient management plan must be updated to identify detailed procedures for composting of dead animals and manure as well as procedures for handling finished product (including time frame for how long product will remain on site).

I inquired as to the status of the NMP update, Mr. Berges explained that the NMP was updated and the update was submitted to KDHE. The update to the NMP can be seen as Appendix #13. The update correctly identifies composting as the method for mortality management.

7. Within the next six months, trees must be eradicated from lagoon berms. Document the work done on the submitted operational reports comment section.

During the facility walk through, the berms were covered in vegetation and there was no evidence of trees in the lagoon berms see Appendix #5. There were however a few small saplings in the sediment basin berms.

5.0 FINDINGS AND OBSERVATIONS

The EPA Region VII Enforcement and Compliance Assurance Division requested a CAFO inspection to determine if NextGen is in compliance with the CWA.

On May 22, 2023, I inspected NextGen, the weather conditions at the time of the inspection were sunny, 75°F with a slight breeze. I met with Berges the environmental consultant for the facility and we discussed operational processes being performed at the facility and performed a visual inspection of the facility. As mentioned above, NextGen had a total of approximately 750 head of feeder cattle in the confinement pens onsite at the time of the inspection. NextGen is operating as a large CAFO and has been issued a National Pollution Discharge Elimination System (NPDES) permit (#KS0092177), the permit is included as Appendix #9. NextGen is required by the NPDES permit to control all process wastewater discharges from the facility.

During the visual inspection, I observed the facility including the pens, manure compost area, feed commodity area, sedimentation basins, and the five wastewater holding ponds.

Pens:

As mentioned in the facility NPDES permit (see Appendix #9), the facility consists of 5 control areas. The permit includes a diagram which identifies the drainage areas and waste storage ponds. In addition to the information in the NPDES permit, Mr. Berges provided me with

a facility diagram (see Appendix #11) which dates back to 2004 and is slightly out of date but is for the most part correct. These diagrams (and flowpaths) were verified by our observations during the facility walk through.

- During the inspection, I noted that runoff from the northeast corner of the working pens on the north end of area 3 (see Appendix #5, Photos #17-18 and Appendix #6) is not controlled. Runoff from this area flows east along the road ditch approximately 0.12 miles to the point where it flows into a drainageway which continues on approximately 0.10 miles to a freshwater pond owned by the facility.

Manure Composting Area:

The manure composting area is located within area 1. Runoff from the manure composting area flows south to Waste Storage Pond 1. As can be seen in Appendix #5, Photos #19-23, the area between the compost area and the sediment basin which drains to Waste Storage Pond 1 is covered in vegetation. I viewed and photographed the “old” compost pile, it can be seen in Appendix #5, Photos #19-22. As can be seen in the photos, the old compost is being screened and is being sold by a separate company.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 3 – The compost pile is being exported to Mr. Rusty Heins. Mr. Heins started screening the compost pile in early May and has access to several hundred acres of farmland. The exported waste will be documented on the Exported Waste Report of the Annual Report.

In addition to the compost issue, as mentioned in the liquid wastes section above, solids deposits have diminished the storage capacity of Wastewater Holding Ponds #2 and 3 and numerous sedimentation basins throughout the facility (see Appendix #5).

Feed Commodities Area:

The feed commodities area has been relocated from south and east of the facility to directly across Road 350 from the facility. Process wastewater from the feedstock storage area is uncontrolled and the facility relies on minimizing the exposure of the feed stuffs to precipitation to reduce the amount of contaminated runoff leaving the area. From the feed commodities area, runoff flows southeast approximately 250 to 500 feet (depending on which portion the runoff emanates) across a grassy area to a small grassed drainageway which flows approximately ¼ mile to the point where it flows into the unnamed tributary to Allen Creek described earlier in this report.

During the facility walk through I viewed a pile of waste silage (see Appendix #5, Photos #33 and 34). I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility response to the NOPF, Mr. Berges states:

Corrective Action 2 – The waste silage pile in the commodities area was removed the day after the inspection, May 23, 2023. A photo of the removed waste silage pile was e-mailed to you on June 02, 2023. Appendix #14 is the photo taken by Mr. Berges of the area from which the waste silage pile was removed.

Sediment Basins and Holding ponds:

During the facility tour, I noted that the sediment basins appeared to be functioning as intended. As can be seen in Appendix #5, Photos #5, 8, 25 and 29, some of the sediment basins were in need of solids removal and some of the sediment basins were holding wastewater, these concerns were listed in the most recent KDHE inspection report (see Appendix #12). **Following the inspection, KDHE requested that by December 17, 2022, the facility submit a plan detailing how the facility planned to manage solids as of June 15, 2023, this information has not been submitted to KDHE.**

- There was an area on the east side of the facility in Area 3 (see Appendix #6) where the elevation difference between the top of the diversion berm and the bottom of the basin appeared to be minimal (see Appendix #5, Photos #17 and 18). The exact elevation could not be determined but it appeared that in the event of a large, short duration precipitation event, the diversion berm may be over-topped and production wastes would not flow to Waste Storage Pond 3 and would instead flow to an uncontrolled area. At the time of the inspection, there was no evidence that this had occurred.
- Appendix #5, Photo 13 shows a culvert at the northeast corner of the confinement pens in area 3 (see Appendix #6). This culvert serves to convey wastewater collected by the berm along the east side of the pens under the feed road. The culvert appeared to be a 12-inch diameter culvert but had sustained damage thereby restricting the opening size. In its current state, this culvert seems to be susceptible to plugging by debris. If the culvert did plug runoff would quickly overtop the berm and would no longer flow to Waste Storage Pond 3 and would instead flow to an uncontrolled area. At the time of the inspection, there was no evidence that this had occurred.
- As can be seen in Appendix #5, Photos #17 and 18, runoff from the northeast corner of the working pens on the north end of area 3 (see Appendix #6) is not controlled. Runoff from this area flows east along the road ditch approximately 0.12 miles to the point where it flows into a drainageway which continues on approximately 0.10 miles to a freshwater pond owned by the facility.
- During the facility tour I viewed each of the Waste Storage Ponds. The table below shows the available freeboard of each Waste Storage Pond along with the operating level specified in Section B Operation and Maintenance Requirements Table 1.

Waste Holding Pond Number	Freeboard at Time of Inspection	Permitted Operating Level	Photo (Appendix #5)
1	5 feet	10.5 feet	#28
2	6 feet	6.0 feet	#1,2
3	5 feet	8.0 feet	#6
4	8 feet	8.0 feet	#26
5	9 feet	8.5 feet	#24

As can be seen in the Table above and as mentioned in previous sections of this inspection report, Waste Storage Ponds 1 and 3 had less freeboard than required by the facility NPDES permit.

Liquid Waste Land Application Areas:

- During the inspection, I viewed the two liquid land application areas associated with the facility. The two areas are located just south of the facility across from Road 350 and are separated by the feed commodities area. At the time of the inspection, the two land application areas were planted in hay in the fall of 2020 and according to the facility reply to the NOPF (see Appendix #8) were harvested the week of May 28, 2023 and is to be planted in corn in early June.

Permit Requirements:

As mentioned above, the facility has been issued an NPDES Permit (KS0009217) (see Appendix #9). As can be seen in the permit, the effective date was January 5, 2018, and the expiration date was December 17, 2022. The facility did submit an application to the KDHE (see Appendix #10) which is stamped as received by KDHE on October 3, 2022. According to the KDHE, the permit has not been reissued due to several outstanding compliance issues identified during the September 29, 2022 inspection (see Appendix #12). Listed below are the various sections of the permit where I identified potential non-compliance issues.

Section A Facility Description

Facility Description: This section of the NPDES permit speaks to the proposed modification of Area 3 to include moving the existing containment diversion to capture runoff from the Northeast pens. At the time of the inspection, I observed the berm which was constructed along the east side of the pens. The berm serves to capture the majority of the runoff from the sorting pens on the north side of the facility. During the inspection, I noted that runoff emanating from the far northeast corner of the pen as described above is not captured (see Appendix #5, Photos #17 and 18). Runoff from this area flows east along the road ditch approximately 0.12 miles to the point where it flows into a drainageway which continues on approximately 0.10 miles to a freshwater pond owned by the facility.

The facility NPDES permit details proposed modifications to Areas 4 and 5. These modifications have been completed.

The facility NPDES permit describes a commodity storage area located to the east approximately 3/8 mile east of the current one. The previous feed commodity area had a small earthen retention structure and grassy filter strips. Process wastewater from the new feedstock storage area is uncontrolled and the facility relies on minimizing the exposure of the feed stuffs to precipitation to reduce the amount of contaminated runoff leaving the area. From the feed commodities area, runoff flows southeast approximately 250 to 500 feet (depending on which portion the runoff emanates) across a grassy area to a small grassed drainageway which flows approximately 1/4 mile to the point where it flows into the unnamed tributary to Allen Creek described earlier in this report.

During the facility walk through I viewed a pile of waste silage (see Appendix #5, Photos #33 and 34) on the east side of the feed commodity area.

Section B Operation and Maintenance

Liquid or Slurry Wastes: Table 1 – Operating Level Requirements lists the operating levels of the five wastewater holding ponds associated with the facility, the table below lists the permit required operating level as well as the level of the holding pond at the time of the inspection:

Waste Holding Pond Number	Freeboard at Time of Inspection	Permitted Operating Level	Photo (Appendix #5)
1	5 feet	10.5 feet	#28
2	6 feet	6.0 feet	#1,2
3	5 feet	8.0 feet	#6
4	8 feet	8.0 feet	#26
5	9 feet	8.5 feet	#24

As can be seen in the table above, the wastewater freeboard level at the time of the inspection in Wastewater Holding Ponds 1 and 3, is lower than the allowable operating level required by the permit by 5.5 and 3 feet in these two wastewater ponds.

The same section of the permit goes on to state that whenever the available storage capacity is less than the required amount(s) specified in Table 1, dewatering shall be initiated and conducted on all days suitable for land application of waste until the required storage capacity is again available.

As a permit requirement, the facility is to report the Waste Holding Pond levels daily if the level is over the operating level specified in Table 1 of the permit. As can be seen in the facility Operation Reports (Appendix #15), the facility had less than the required operating level from at least January 2022 to April 2023 in all five of the Waste Holding Ponds.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 1 – The facility is continuing to work to dewater wastewater lagoons #1 and #3. Both land application pivots were planted to triticale in fall 2022 and harvested for hay the week of May 28, 2023. Both pivots will be planted to corn (for silage) in early June. The facility will resume dewatering the lagoons as soon as the corn is planted.

Unfortunately, the large available storage capacity requirements for the lagoons (compared to their depths) makes it difficult to reach the required freeboard levels as most of the operational capacity is filled with sediment.

Ultimately, the facility needs additional storage capacity. The facility is currently in the early stages developing engineering plans for additional storage capacity either through enlarging or constructing additional storage lagoons. The goal is to have the engineering plans will be submitted to KDHE before October 1, 2023.

- **Solid Waste:** The KDHE inspection report (see Appendix #12) identified the “old” compost pile as being a non-compliance issue.

As mentioned above, I viewed and photographed the “old” compost pile, it can be seen in Appendix #5, Photos #19-22. As can be seen in the photos, the old compost is being screened and is being sold by a separate company.

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Corrective Action 3 – The compost pile is being exported to Mr. Rusty Heins. Mr. Heins started screening the compost pile in early May and has access to several hundred acres of farmland. The exported waste will be documented on the Exported Waste Report of the Annual Report.

In addition to the compost issue, as mentioned in the liquid wastes section above, solids deposits have diminished the storage capacity of Wastewater Holding Ponds #2 and 3 and numerous sedimentation basins throughout the facility (see Appendix #5).

The facility NPDES permit Section B. Operation and Maintenance Requirements, Solid Wastes, states: “Sedimentation basin(s) shall be cleaned whenever solids accumulations exceed one half of the depth of the basin(s).”

Retention structure(s) shall be cleaned whenever the solids accumulations infringe on the required operating level specified in Table 1.”

I listed this finding in the Notice of Preliminary Findings which is included as Appendix #4. Appendix #8 is the facility reply to the NOPF, Mr. Berges states:

Section D Reporting and Recordkeeping

During the facility inspection, I asked for and was provided a copy of the facility operation reports from 2022 to present (see Appendix #15) as well as the 2022 annual report (see Appendix #16), the 2022-2026 nutrient management plan (see Appendix #17) and a 2023 nutrient management plan update (see Appendix #13).

2022 to 2023 Operation Reports:

As mentioned above, the facility Operation Reports (Appendix #15) show that the facility had less than the required operating level from at least January 2022 to April 2023 in all five of the Waste Holding Ponds.

2022 Annual Report: The facility annual report (Appendix #16) indicated the total amount of both solids and liquids generated and applied by the facility as well as the names and amounts which were exported. There were no discharges recorded.

Section E Schedule of Compliance

The facility NPDES permit states: “The operator is responsible for ensuring the Department is provided with as-built plans detailing any deviations from the approved plans and specifications or a post construction certification to assure the system is constructed in accordance with the approved plans and specifications within thirty (30) days of the completion of construction.”

As mentioned above, since the permit was issued, the facility has modified Areas 4 and 5, the feed commodities location and the diversion berms on the north end of Area 3. The KDHE inspection (see Appendix #12) requested that post construction reports including as built diagrams be provided to KDHE by December 17, 2022. As of June 15, 2023, this information has not been provided to KDHE.

Receiving Water

The facility is located approximately 2 miles northwest of the town of Allen Kansas along Road 350. The area surrounding the feedlot and the commodities area flows approximately 3.7 miles southwest through an unnamed tributary to Allen Creek to the point where the unnamed tributary enters Allen Creek. Allen Creek flows south approximately 28 miles to the point where it combines with the Neosho River. Allen Creek and portions of the unnamed tributary to Allen Creek were flowing at the time of the inspection (see Appendix #1).

6.0 OTHER REGULATORY CONCERNS

Listed below are other potential concerns identified during the inspection.

- As mentioned in previous sections of this report, there was an area on the east side of the facility in Area 3 (see Appendix #6) where the elevation difference between the top of the diversion berm and the bottom of the basin appeared to be minimal (see Appendix #5, Photos #17 and 18). The exact elevation could not be determined but it appeared that in the event of a large, short duration precipitation event, the diversion berm may be overtopped and production wastes would not flow to Waste Storage Pond 3 and would instead flow to an uncontrolled area. At the time of the inspection, there was no evidence that this had occurred.
- Appendix #5, Photo 13 shows a culvert at the northeast corner of the confinement pens in area 3 (see Appendix #6). This culvert serves to convey wastewater collected by the berm along the east side of the pens under the feed road. The culvert appeared to be a 12 inch diameter culvert but had sustained damage thereby restricting the opening size. In it's current state, this culvert seems to be susceptible to plugging by debris. If the culvert did plug runoff would quickly overtop the berm and would no longer flow to Waste Storage Pond 3 and would instead flow to an uncontrolled area. At the time of the inspection, there was no evidence that this had occurred.

7.0 SUMMARY

NextGen is located approximately 2 miles northwest of the town of Allen Kansas along Road 350. The legal description for the facility is the SW 1/4 Section 9, S 1/2 Section 8, NE 1/4 Section 17, Township 16 S, Range 11 E, Lyon County, Kansas. The NPDES permit (Appendix #9) has an effective date of December 18, 2017 and has an expiration date of December 17, 2022. The facility did submit an application for renewal of the permit which, is included as Appendix #10. As a result, KDHE has administratively extended this permit.

The facility was not discharging at the time of the inspection however we did note several preliminary findings many of which are ongoing compliance issues noted by KDHE during their inspections. These findings are summarized below:

1. During the inspection, I noted that runoff from the northeast corner of the working pens on the north end of area 3 (see Appendix #6) is not controlled. Runoff from this area flows east along the road ditch approximately 0.12 miles to the point where it flows into a drainageway which continues on approximately 0.10 miles to a freshwater pond owned by the facility. Runoff from this area flows east along the road ditch approximately 0.12 miles to the point where it flows into a drainageway which continues on approximately 0.10 miles to a freshwater pond owned by the facility.
2. Runoff from the feed commodities area is uncontrolled (see Appendix 5 Photos #32 to 35 and Appendix #6). The facility NPDES permit requires that all process wastewater be contained.
3. The facility has a large compost pile which I viewed during the inspection (see Appendix #5, Photos #19-22) and as identified in the KDHE inspection (see Appendix #12). The compost pile has been onsite for more than 18 months and has not been land applied. The

2023 Nutrient Management Plan Update, Management of Mortalities states that finished product (compost) will not remain on site for more than six months.

4. At the time of the inspection, the wastewater level in Wastewater Holding Ponds #1 and 3 were less than the operating levels specified in Table 1 of the facility NPDES permit. In addition to this according to the facility Operation Reports (Appendix #15), the facility had less than the required operating level from at least January 2022 to April 2023 in all five of the Waste Holding Ponds.
5. The facility has not provided KDHE with, post construction reports including as built drawings after modifying Ares 4 and 5, relocation of the feed commodities area and the modifications to the diversion berms in Area 3 as required by the facility NPDES permit F. Schedule of Compliance.

I departed the facility at 2:21pm.

**LORENZO
SENA**

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LORENZO SENA
Date: 2023.07.03
11:31:43 -05'00'

Lorenzo Sena
Physical Scientist

**Moran,
Nicole**

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by Moran, Nicole
Date: 2023.07.07
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Nicole Moran
Section Chief

APPENDICES:

1. Stream Characterization and Water Nexus (13 pages)
2. General CAFO Inspection Form with Notes (18 pages)
3. Confidentiality Notice (4 pages)
4. Notice of Preliminary Findings NOPF (1 pages)
5. Photos #1 - #35 (18 pages)
6. Facility Diagram and Photo Locations (3 pages)
7. Entry/ Exit Briefing Form (1 page)
8. Facility Response to NOPF (2 pages)
9. NPDES Permit # KS KS0092177 (13 pages)
10. NPDES Permit Renewal Application (12 pages)
11. Facility Diagram Showing Contours (2 pages)
12. KDHE Inspection Report September 29, 2022 (27 pages)
13. 2023 NMP Update (15 pages)
14. Daniel Berges Photo of Removed Silage Pile (1 page)
15. 2022 and 2023 Facility Operating Reports (16 pages)
16. 2022 Facility Annual Report (15 pages)
17. Nutrient Management Plan 2021-2025 (53 pages)