

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 N. 5th Street
Kansas City, Kansas

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the matter of:)
) DOCKET NO. CWA-07-2001-0094
Tony Bellon)
d.b.a. Tony Bellon Broiler Operation)
Exeter, Missouri)
)
Respondent) FINDINGS OF VIOLATION
) ORDER FOR COMPLIANCE
)
)
)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Preliminary Statement

1. The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region VII, and redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. The Respondent is Tony Bellon, d.b.a. Tony Bellon Broiler Operation ("Respondent"), who owns and operates an animal feeding operation located in Northeast ¼ of Southwest ¼ of Section 30, Township 23N, Range 28W, of Barry County, Missouri.

Statutory and Regulatory Authority

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

5. Section 504(12) of the CWA, 33 U.S.C. §1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

6. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include biological materials and agricultural waste discharged to water.

8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include “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... from which pollutants are or may be discharged.”

9. “Concentrated animal feeding operation” is defined by 40 C.F.R. § 122.23(b)(3) as “an ‘animal feeding operation’ which meets the criteria in Appendix B of this part.”

10. “Animal feeding operation” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

11. Appendix B to 40 C.F.R. § 122.23 states that an animal feeding operation is a concentrated animal feeding operation if the animal feeding operation confines more than 30,000 broiler chickens and has a liquid manure handling system, unless the animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

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12. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

13. The Missouri Department of Natural Resources ("MDNR") is the agency within the state of Missouri with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the CWA, implementing regulations, and a Memorandum of Understanding between EPA and MDNR. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent is an individual and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent owns and operates an animal feeding operation under the name Tony Bellon Broiler Operation ("Facility"), located in the Northeast ¼ of Southwest ¼ of Section 30, Township 23N, Range 28W, of Barry County Missouri.

16. On December 14, 2000, EPA conducted an NPDES inspection of Respondent's animal feeding operation.

17. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the confined feeding areas at the Facility at the time of the inspection, and since at least 1999 the Facility has confined and fed or maintained broiler chickens for a total of 45 days or more in any 12-month period. Respondent's Facility is therefore an "animal feeding operation" as defined by 40 C.F.R. 122.23(b)(1).

18. At the time of the inspection, the Facility confined approximately 120,000 broiler chickens.

19. At the time of the inspection, the Facility was storing uncovered piles of litter mixed with manure cake outside at the Facility, where the waste was exposed to precipitation events. The storage of uncovered manure outside constitutes use of a crude liquid manure handling system.

20. The Facility confines over 30,000 broilers and has a liquid manure handling system, and is therefore a "concentrated animal feeding operation" as defined by 40 C.F.R. 122.23(b)(3) and 40 C.F.R. Part 122, Appendix B.

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21. The Facility is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

22. The litter and manure cake stored outside in exposed piles at the time of the EPA inspection was from cleanout of the broiler confinement buildings at the Facility and contains significant amounts of poultry manure, which is a biological waste that is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. The exposed litter and manure cake piles that were present at the Facility at the time of the EPA inspection were within 200 yards of an unnamed tributary of Mikes Creek. The slope of the land and soil and vegetation conditions between the piles and the unnamed tributary of Mikes Creek are such that any significant precipitation would result in runoff from the piles discharging biological wastes to the unnamed tributary and ultimately to Mikes Creek.

24. The unnamed tributary and Mikes Creek are both “waters of the United States” as defined by 40 C.F.R. Part 122.

25. Respondent’s unpermitted discharges of runoff containing pollutants from its Facility to the unnamed tributary of Mikes Creek during precipitation events which are less than a 25-year, 24-hour storm event are in violation of Section 301(a) of the CWA and implementing regulations.

26. Respondent has never applied for nor received an NPDES permit for its concentrated animal feeding operation. MDNR issued a Notice of Violation to Respondent on February 4, 1999, for Respondent’s operation of a concentrated animal feeding operation without a permit.

Compliance Order

Based on the Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §§ 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

27. Immediately upon receipt of this Order, Respondent shall take all measures necessary to eliminate the discharge of animal waste to waters of the U.S., including but not limited to ceasing all uncovered, outside storage of animal wastes. Respondent shall provide written notice to EPA describing all measures it has taken to eliminate discharges.

28. Within 60 days of receipt of this Order, Respondent shall apply for a NPDES permit from MDNR. Respondent shall provide a copy of the permit application to EPA.

Effect of Order

29. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

30. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

31. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

32. If any provision or authority of this Order, or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

33. All submissions to EPA required by this Order shall be sent to:

Paula Higbee
Compliance Officer
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, KS 66101

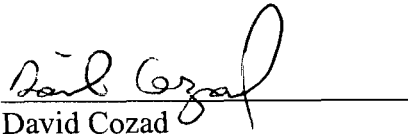
34. Pursuant to 40 C.F.R. §§ 2.201 - 2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited

36. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Dated this th 27 day of September, 2001

A handwritten signature in black ink, appearing to read "Gale Hutton", written over a horizontal line.

Gale Hutton
Director, Water, Wetlands and Pesticides Division
EPA Region VII

A handwritten signature in black ink, appearing to read "David Cozad", written over a horizontal line.

David Cozad
Associate Regional Counsel

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CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region VII. I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following:

Tony Bellon
d/b/a Tony Bellon Broiler Operation.
Route 3, Box 3081
Exeter, Missouri 65647

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Missouri:

George Parsons
Southwest Regional Office
Missouri Department of Natural Resources
2040 W. Woodland
Springfield, MO 65807

9/28/01
Date

Amy Tompkins