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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
SEABOARD FARMS, INC.)
FETERITA SITE—FARMS 221, 223, 225))
STEVENS COUNTY, KANSAS)
)
Respondent)
)
)
)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2004-0292

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE

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 Seaboard Farms, Inc. who owns and operates an animal feeding operation in Stevens County consisting of three interconnected finishing farms: 221, 223 and 225. Farm 221 is located in the Southeast ¼ of the Northeast ¼ of Section 36, Township 33S, Range 39W. Farm 223 is located in the Northeast ¼ of the Southeast ¼ of Section 25, Township 33S, Range 39W. Farm 225 is located in the Southeast ¼ of the Southwest ¼ of Section 30, of Township 33S, Range 38W.

Statutory and Regulatory Framework

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 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 C.F.R. Part 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 to include, *inter alia*, 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 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. "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.
10. "Concentrated animal feeding operation" is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO in accordance with 40 C.F.R. § 122.23(b)(4).
11. "Large CAFO" is defined by 40 C.F.R. § 122.23(b)(4) as an AFO that confines as many as or more than 2,500 swine, each weighing 55 pounds or more.
12. Concentrated Animal Feeding Operations are by definition point sources subject to the NPDES permit program. 40 C.F.R. § 122.23(a).

13. "Waters of the United States" are defined in 40 C.F.R. Part 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Kansas Department of Health and Environment (KDHE) is the agency within the State of Kansas with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

15. Respondent is a corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
16. Respondent owns and operates a swine finishing operation ("Facility") known as the Feterita Site, which consists of Farms 221, 223, and 225. Farm 221 is located in the Southeast ¼ of the Northeast ¼ of Section 36, Township 33S, Range 39W. Farm 223 is located in the Northeast ¼ of the Southeast ¼ of Section 25, Township 33S, Range 39W. Farm 225 is located in the Southeast ¼ of the Southwest ¼ of Section 30, of Township 33S, Range 38W.
17. On October 7, 2003, EPA conducted an NPDES inspection of Respondent's animal feeding operation.
18. At the time of the inspection, the Facility confined greater than 2,500 swine, each weighing greater than 55 pounds.
19. The Facility confines and feeds or maintains swine for a total of 45 days or more in any 12-month period.
20. 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.
21. The Facility is a "large concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4), and is therefore a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
22. KDHE granted NPDES Permit No. KS 0092215 to Respondent that became effective May 23, 2001. The NPDES permit expires on May 22, 2006.

23. Respondent's NPDES permit requires that water pollution retention structures(s) shall be regularly maintained with adequate freeboard to ensure structural stability and sufficient available storage capacity to retain future dry weather waste water accumulations from a two (2) week period and/or precipitation induced runoff accumulations from all contributing drainage areas equivalent to the maximum quantity of precipitation expected to occur over a twenty-four (24) hour period once in ten (10) years on a statistical probability basis.
24. On dates between January 2003 and October 2003, Respondent did not maintain adequate freeboard as required by its NPDES Permit.
25. Respondent's NPDES permit states that records shall be kept for any day that the water level infringes on the required freeboard or the required waste water storage volume is not available in any impoundment. The available storage depth shall be recorded daily until required storage capacity is achieved and maintained by the facility.
26. According to Respondent's records entitled *Operational Reports of Agricultural and Related Waste Control Facilities*, records were not kept on days when the freeboard was exceeded or the required storage volume was not available between January 2003 through September 2003.
27. Respondent's NPDES permit states that days suitable for land application of waste are those on which no precipitation occurs and have been immediately preceded by at least three successive days with less than 0.05 inch of precipitation per day; and on which non-frozen ground conditions prevail, there is no snow cover, and the temperature during disposal activities exceeds 32° Fahrenheit.
28. Facility records indicate that 0.10 inches of precipitation fell on April 23, 2003. Respondent land applied waste on April 24, 2003 at Farm 221, and April 25 and 26, 2003, at Farm 223, days that were not suitable for land application of wastes because it was preceded by greater than 0.05 inches of precipitation within three successive days. Respondent also land applied waste on other days not suitable for land application: September 16, 17 and 18, 2003 at Farm 221 where 0.10 inches of precipitation had fallen on September 15, 2003.

Order For Compliance

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 permit conditions and the CWA:

29. Respondent shall ensure that waste water levels in storage structures are in compliance with the storage structure operating levels of Respondent's NPDES permit. On an ongoing basis, Respondent shall remove waste water from the storage structures in a timely manner so that the Facility remains in continuous compliance with storage structure operating level requirements. When removing waste water from the storage structures, Respondent shall comply with all applicable requirements regarding proper land application of waste water.
30. Respondent shall ensure that solids accumulations in storage structures are in compliance with the solids accumulation requirements of Respondent's NPDES permit. On an ongoing basis, Respondent shall remove solids accumulations from the storage structures in a timely manner so that the Facility remains in continuous compliance with NPDES requirements. When removing accumulated solids from the storage structures, Respondent shall comply with all applicable requirements regarding proper land application of waste.
31. On a quarterly basis for one year, Respondent shall submit to EPA copies of all lagoon level, precipitation, and land application monthly records that Respondent is required to keep pursuant to Respondent's NPDES permit. Respondent shall also include any records documenting solids accumulation and, if necessary solids removal. The first quarterly report shall be submitted to EPA on October 7, 2004, and subsequent reports shall be submitted on January 7, 2005, April 7, 2005, and July 7, 2005.

Effect of Order

32. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
33. 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.

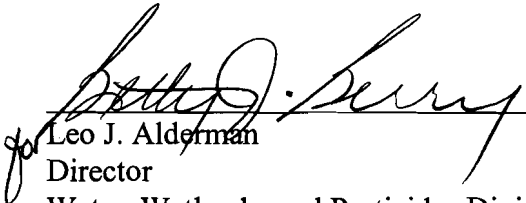
34. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
35. EPA may subsequently amend this Order in accordance with the 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. EPA may also submit additional Orders seeking penalties for the violations that occurred.
36. 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.
37. All submissions to EPA required by this Order shall be sent to:

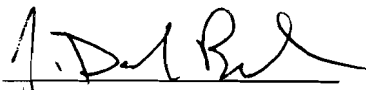
Kimberly Harbour
CAFO Enforcement Coordinator
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency – Region VII
901 N. 5th Street
Kansas City, KS 66101
38. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the 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 regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. § 2.302.

39. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
40. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date

08/24/04


for Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

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, Order for Compliance with cover letter and a copy of the Part 22 Rules to the following agents for Seaboard Farms, Inc.

Keith Seimsen, Manager
Seaboard Farms, Inc.—Feterita Farms 221, 223, 225
P.O. Box 1207
424 North Main, Suite 200
Guymon, Oklahoma 73942

Corporation Service Company
200 SW 30th Street
Topeka, Kansas 66611-0000

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 representatives of the State of Kansas:

John Harsch, Chief
Livestock Waste Management Program
Kansas Department of Health and Environment
1000 S.W. Jackson
Topeka, Kansas 66612

8/25/04
Date

Andy Gonzalez