

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

Double V Dairy, LLC
Rock Valley, Iowa,

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)
) Docket No. CWA-07-2010-0085
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)

Respondent

) FINDING OF VIOLATION
) ORDER FOR COMPLIANCE
)
)
)

Proceedings under
Sections 308(a) and 309(a)(3)
of the Clean Water Act,
33 U.S.C. §§ 1318(a) and 1319(a)(3)

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Section 308(a) and Section 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 and 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 7, and redelegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.
2. The Respondent Double V Dairy, LLC (“Respondent”), owns and/or operates an animal feeding operation located in western ½ of Section 27 in Township 97 North, Range 46 West, in Sioux County, Iowa.

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. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue National Pollutant Discharge Elimination System (“NPDES”) permits that, among other

things, prescribe conditions whereby a discharge of pollutants may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.

5. Section 502(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, the EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States. Furthermore, 40 C.F.R. § 122.23(d)(1) provides that a concentrated animal feeding operation (CAFO) must apply for an NPDES permit if it discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur.
7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. 1362(6) 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(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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
9. “Animal feeding operation” or “AFO” 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” or “CAFO” 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 according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines as many as, or more than, “700 dairy cows, whether milked or dry. ”
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 Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa authorized to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent owns and operates a dairy that is located in the western ½ of Section 27 in Township 97 North, Range 46 West, in Sioux County, Iowa (the “Facility”).
15. On March 18, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility. During the inspection, EPA’s inspectors observed and sampled storm water runoff from the feedlot that was discharging into Rogg Creek and its tributaries. EPA inspectors observed that the storm water runoff contained manure and other pollutants.
16. The Facility confines and feeds or maintains dairy cattle for a total of forty-five (45) days or more in any twelve month period.
17. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility’s feeding areas.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. At the time of the March 18, 2010 EPA inspection, the Facility was confining approximately 1070 head of dairy cattle.
20. The Facility is a CAFO as defined by 40 C.F.R. § 122.23(b)(2), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
21. The number of dairy cattle confined and fed at the Facility is greater than 700, therefore, the Facility is a Large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).
22. During the inspection, EPA inspectors observed manure, litter, and process waste water from the eastern portion of the Facility flowing directly into Rogg Creek and its tributaries.
23. Rogg Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2.
24. The Facility does not have adequate livestock waste control facilities to prevent the discharge of manure, litter, and process waste water to Rogg Creek and its tributaries.

25. Respondent has not applied for an NPDES permit for the Facility.
26. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Rogg Creek and its tributaries, the slope and condition of the land across that distance, and observed discharges, manure, litter and process waste water will continue to discharge into Rogg Creek and its tributaries as a result of significant precipitation events.
27. The intermittent yet ongoing flow of process waste water from Respondent's Facility to Rogg Creek and its tributaries as a result of significant precipitation events constitutes unauthorized discharges of pollutants from a point source to waters of the United States. The unauthorized discharges and Respondent's failure to apply for an NPDES permit are violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §1311 and 1342, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 14 through 27 above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

28. Immediately upon receipt of this Order, Respondent shall cease all discharges of manure, litter or process wastewater from the Facility to waters of the United States.
29. If manure, litter or process wastewater cannot be managed at the Facility in a manner that prevents discharges to waters of the United States, then Respondent shall reduce the number of cattle confined at the Facility below regulatory thresholds for a Large CAFO within sixty (60) days of receipt of this Order. Respondent shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents all discharges to waters of the United States.
30. If Respondent cannot immediately cease all discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter and process wastewater from areas that cannot be controlled in a manner to prevent discharges.
31. Unless Respondent permanently reduces the number of livestock confined at the Facility below regulatory thresholds, Respondent shall apply for an NPDES permit for the Facility

within thirty (30) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the construction and operation of livestock waste controls.

32. Within fifteen (15) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions taken to comply with the CWA and the terms of this Order.
33. If Respondent intends to construct adequate runoff control structures to allow the confinement of cattle above regulatory thresholds, then beginning thirty (30) days after receipt of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports to EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the Facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were/will be addressed.
34. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

Effect of Order

35. 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.
36. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.
37. Nothing in this Order shall limit the 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.
38. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.

39. 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.

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

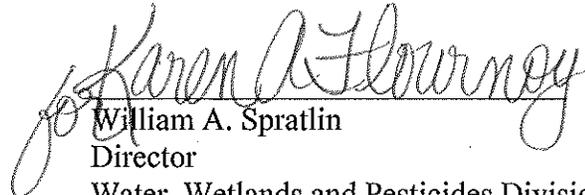
Stephen Pollard
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

41. 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 CWA appear in 40 C.F.R. § 2.302.

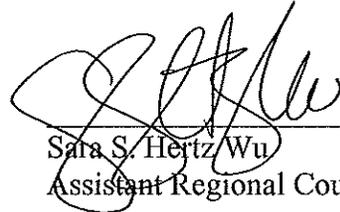
42. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

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

3-26-10
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



Sara S. Hertz/Wu
Assistant Regional Counsel

CERTIFICATE OF SERVICE

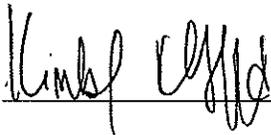
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 together with cover letter and small business assistance information, to the following:

Double V Dairy, LLC
Charles Van Veldhuizen
3154 Fig Avenue
Rock Valley, Iowa 51427

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 Iowa:

Mr. Ken Hessenius
Iowa Department of Natural Resources
Field Office #3
1900 Grand Avenue
Gateway North Mall, Suite E17
Spencer, Iowa 51301.



3/30/10

Date