

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 N. 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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)
ROBERT SPRIECK d/b/a)
SPRIECK BROTHERS LIVESTOCK)
STANTON COUNTY, NEBRASKA)
)
Respondent)
)
)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)

Docket No. CWA-07-2006-0013

FINDING OF VIOLATION
ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“Order”) 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 Robert Spriek (“Respondent”) doing business as Spriek Brothers Livestock. The Respondent owns and operates an animal feeding operation (“Facility”) located in the Northwest ¼ of the Northwest ¼ of Section 5 and the NE ¼ of the NE ¼ of Section 6, Township 23 North, Range 3 East, in Stanton County, Nebraska. The Facility confines cattle in open feedlot pens and swine in confinement buildings.

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 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 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 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” 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 12-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) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b)(3).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
12. “Medium CAFO” is defined according to 40 C.F.R. § 122.23(b)(6) as an animal feeding operation that stables or confines 300 to 999 cattle other than mature dairy cows or veal calves and pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar device or pollutants are discharged directly into

waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

13. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Nebraska Department of Environmental Quality ("NDEQ") is the agency within the state of Nebraska with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the CWA, the Nebraska Environmental Protection Act (Secs. 81-1504 (11), Reissue 1987), and the state of Nebraska Department of Environmental Quality, Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background/Violations

15. Respondent owns and operates an animal feeding operation ("Facility") that is located in the Northwest ¼ of the Northwest ¼ of Section 5 and the NE ¼ of the NE ¼ of Section 6, Township 23 North, Range 3 East, in Stanton County, Nebraska.
16. On April 12, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility.
17. At the time of the inspection 428 feeder cattle were confined at the facility. The Facility's capacity is 1,850 feeder cattle. On or around March 10, 2005, approximately one month before the inspection, the Respondent reduced the number of feeder cattle confined at the facility from greater than 1,000 head to the 428 confined at the time of the inspection.
18. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.
19. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
20. The Facility confines greater than 1,000 head of cattle for at least 45 days over a 12 month period, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4).
21. Respondent does not have an NPDES permit for the Facility.

22. The Facility has two separate but contiguous feeding areas. Runoff from these feeding areas flows south into an unnamed tributary of the Elkhorn River via a culvert located at the southern end of the Respondent's facility. This tributary runs south from Respondent's property until it meets up with the Elkhorn River approximately 2 miles southeast of the facility. At the time of the EPA inspection, EPA documented that a Respondent was discharging livestock waste through the culvert and into the tributary.
23. The Elkhorn River and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2. The segment of the Elkhorn River into which wastewater from Respondent's facility is discharged is designated for recreation, warm water aquatic life and agricultural uses. In 2004, NDEQ listed this segment of the Elkhorn River as being impaired for recreation uses due to high levels of fecal coliform bacteria, which is one of the primary pollutants found in livestock wastes.
24. Based on the size of the Facility, the distance from the Facility to waters of the United States, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility will continue to flow into the Elkhorn River during significant precipitation events.
25. The ongoing flow of wastewater from Respondent's facility to the unnamed tributary constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation 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 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:

26. Respondent shall not confine 1000 or more head of beef cattle at the Facility in a manner that results in the discharge of manure and/or process wastewater into a water of the United States unless the discharges are pursuant to a NPDES permit issued to the facility by NDEQ.
27. Respondent shall not confine 300 to 999 head of beef cattle at the Facility in a manner that results in the discharge of manure and/or process wastewater through a man-made conveyance into a water of the United States unless such discharges are pursuant to a NPDES permit issued to the facility by NDEQ. A man made conveyance is defined as a man made ditch, pipe, or similar device which carries manure or process wastewater from the operation to a water of the United States.

28. On a quarterly basis for one year, Respondent shall submit to EPA copies of all inventory records that document the number of cattle confined at the Facility as well as the pen numbers in which they are held. The first quarterly report shall be submitted to EPA on January 1, 2006, and subsequent reports shall be submitted on April 1, 2006, July 1, 2006 and October 1, 2006.

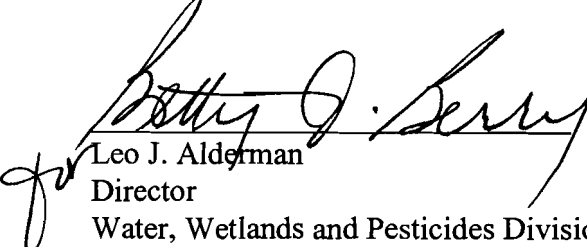
Effect of Order

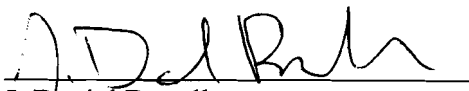
29. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
30. 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.
31. 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.
32. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the 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.
33. 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.
34. 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 VII
901 N. 5th Street
Kansas City, Kansas 66101.

35. 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 the EPA to release the submitted information to the public without further notice. The 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.
36. 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).
37. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 10/24/05


Leo J. Alderman
Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

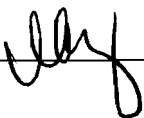
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region VII.

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

Robert Spriek
Spriek Brothers Livestock
57150 840 Road
Pilger, Nebraska 68768

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 Nebraska:

Dennis Heitmann
Supervisor, Agriculture Section
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, 1200 N Street, The Atrium
Lincoln, Nebraska 68509



10/26/05

Date