

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

Brad Pollema)	Docket No. CWA-07-2010-0058
D/B/A Brad Pollema Feedlot)	
Rock Valley, IOWA)	
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 VII's Water, Wetlands and Pesticides Division.
2. The Respondent Brad Pollema ("Respondent"), doing business as Brad Pollema Feedlot, owns and/or operates an animal feeding operation located in Section 12 of Township 97 North, Range 47 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 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, EPA promulgated regulations codified at 40 C.F.R. § 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. 40 C.F.R. § 122.23(d)(1) further 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, “1,000 cattle other than mature dairy cows or veal calves.”
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. 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 an AFO that is located in Section 12 of Township 97 North, Range 47 West, in Sioux County, Iowa (“Facility”).
15. The Facility confines and feeds or maintains beef cattle for a total of 45 days or more in any twelve-month period.
16. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility’s feeding areas.
17. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
18. Inspectors from EPA inspected Respondent’s Facility on October, 27, 2009, to determine Respondent’s compliance with the CWA.
19. At the time of the October 27, 2009, inspection, the Facility was confining approximately 792 head (in confinement buildings) and 504 head in open lots. The number of beef cattle confined at the Facility is greater than 1,000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). At the time of the October 27, 2009, inspection, Respondent did not have a NPDES permit for the Facility. Respondent applied to IDNR for an NPDES permit in December 2008. However, the application did not include required information and IDNR rejected the application. As of the date of EPA’s inspection, Respondent had not provided this additional information to IDNR.
20. Manure, litter, or process wastewater from Respondent’s facility flows through two different discharge paths into a perennial tributary of the Rock River. The tributary flows approximately 4 miles to its confluence with the Rock River.
21. The Rock River and its tributary are waters of the United States, as defined by 40 C.F.R. § 122.2.
22. EPA inspectors observed that the Facility does not have adequate livestock waste control facilities to prevent the discharge of pollutants associated with animal waste to the Rock River and its tributary.

23. Based on the size of the Facility, the distance from the Facility to a perennial tributary of Rock River, and the slope and condition of the land across that distance, manure, litter, or process wastewater containing pollutants from production areas at the Facility have and will discharge into Rock River and its tributary as a result of significant precipitation events.
24. The discharge of manure, litter, or process wastewater without a permit from Respondent's Facility to Rock River and its 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 CWA, 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:

25. Respondent shall come into compliance with the CWA within thirty (30) days of the effective date of this Order by ceasing discharges or removing livestock from all areas within the Facility where manure, litter, or process wastewater is not controlled in a manner to prevent discharges to waters of the United States. If livestock cannot be confined at the Facility in a manner that prevents discharges to waters of the United States then Respondent shall immediately reduce the number of livestock confined at the Facility below regulatory thresholds. Respondent shall not repopulate livestock above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents discharges to waters of the United States and maintains compliance with the CWA.
26. Regardless of whether the number of livestock is reduced below regulatory thresholds, if Respondent cannot immediately cease all discharges from the Facility to waters of the United States, then Respondent shall immediately remove and properly dispose of manure from areas that cannot be controlled in a manner to prevent discharges.
27. Within thirty (30) days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions that Respondent has taken to comply with the CWA and the terms of this Order.
28. 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 or provide the additional information necessary for IDNR to act on Respondent's application 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.

29. If Respondent intends to construct manure, litter, or process wastewater control structures to allow the confinement of livestock above regulatory thresholds, then beginning within thirty (30) days of the effective date of this Order, and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to the 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.
30. Upon completion of the manure, litter, or process wastewater control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
31. Upon receipt of this Order and continuing until such time as Respondent is issued an NPDES Permit for the Facility, Respondent shall perform the following monitoring and recordkeeping activities: (1) maintain land application records, including dates, location, amounts applied, and application rates; (2) maintain precipitation records; and, if applicable, (3) record and maintain storage facility liquid levels after every event with the potential to change the amount of liquid in the storage facility. Respondent shall submit copies of these records to the EPA on a quarterly basis for the periods of February-April, May-July, August-October, and November-January. Records must be submitted on or before the seventh day of the month following the end of the period (May 7, August 7, November 7, and February 7). Upon issuance of an NPDES permit, Respondent shall maintain and submit records as required by the NPDES permit.

Effect of Order

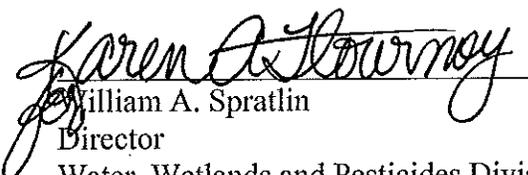
32. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

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

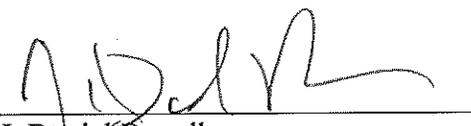
Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.
38. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted 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 CWA 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 \$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).
40. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

2-5-10
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

2/4/2010
Date


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

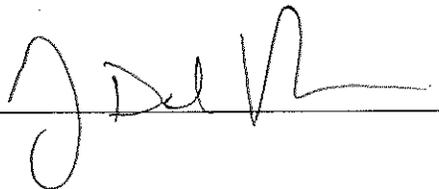
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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:

Mr. Brad Pollema
Brad Pollema Feedlot
2224 290th Street
Rock Valley, Iowa 51247.

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:

Ken Hessenius
Iowa Department of Natural Resources
Gateway North, Suite E17
Spencer, Iowa 51301.



Date

2/8/10
