

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

DeCoster Enterprises, LLC)	Docket No. CWA 07-2011-0040
DeCoster Farms Layer #4)	
2680 250 th Street)	
Clarion, Iowa)	
)	
Respondent)	FINDINGS 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, DeCoster Enterprises, LLC (“Respondent”), owns and/or operates an animal feeding operation located in the W ½ of the NE ¼ of Section 23 in Township 91 North, Range 24 West, in Wright County, Iowa. The feeding operation is commonly known as DeCoster Farms Layer #4 with the street address of 2680 250th Street, Clarion, Iowa. The operation is herein referred to as the Facility or Operation.

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. “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. Pollutant includes “process wastewater,” which includes any water which comes in contact with, among other things, manure, litter or feed. *See* 40 C.F.R. § 122.23(b)(7).
7. “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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
8. “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.
9. “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).
10. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “82,000 laying hens, if the AFO uses other than a liquid manure handling system.
11. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must apply for an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. 40 C.F.R. § 122.23(d)(1).

12. "Process wastewater" is defined by 40 C.F.R. § 122.23 as water "directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding."
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 Iowa Department of Natural Resources ("IDNR") is the agency within the state of Iowa with the authorized authority 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

15. Respondent owns and operates an egg layer operation that is located in the W ½ of the NE ¼ of Section 23 in Township 91 North, Range 24 West, in Wright County, Iowa, commonly known as DeCoster Farms Layer #4 with the street address of 2680 250th Street, Clarion, Iowa.
16. Between October 12-14, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility. EPA inspectors observed that laying house clean out activities, including the loading of chicken manure, were occurring at the time of the inspection. The cleanout and loading activities occurred in areas between the laying houses at the Facility. EPA inspectors observed that most of the loading activities occurred in areas that lacked impervious ground cover or curbing to prevent stormwater runoff. EPA inspectors observed chicken manure in drop inlets and spilled over the ground surface within these areas of the Facility. These areas between the laying houses are exposed to direct precipitation and additional indirect precipitation from as much as 30,000 square feet of unglutted roof. This precipitation mixes with the chicken manure and meets the definition of process wastewater. Drop inlets, culverts and drainage ditches are necessary to drain the precipitation received by these areas of the Facility. The process wastewater from these areas is diverted and carried by a series of drop inlets culverts, and drainage ditches approximately 100 yards to an unnamed tributary. The unnamed tributary, Ditch No. 3, and the Iowa River are all perennial waters of the U.S.
17. During the inspection, Respondent informed EPA inspectors that the manure and litter handling at the Facility is exempted from NPDES and Iowa manure management criteria

because it is sold and is therefore a fertilizer or soil conditioning product. However, Iowa Administrative Code 21-44.57(200) establishes minimum requirements applicable to loading of non-liquid fertilizer and soil conditions. In particular, I.A.C. 21-44.57(200) requires that all loading of non-liquid fertilizers or soil conditioners shall be done in an area paved with asphalt, concrete, or other impervious materials. Iowa Code also requires that the loading area shall be constructed using curbs or other means to prevent runoff or runoff of stormwater. EPA inspectors observed that Respondent was not meeting these requirements and was instead spilling chicken manure in areas that are not impermeable and thus cannot be adequately cleaned to prevent exposure of pollutants to precipitation and the creation of process wastewater. Moreover, inspectors also observed these areas of the Facility are not guttered or curbed to prevent the drainage of the process wastewater to a water of the United States.

18. Ditch No. 3, the Iowa River and their tributaries are waters of the United States, as defined in 40 C.F.R. §122.2.
19. The Facility confines and feeds or maintains laying hens for a total of forty-five (45) days or more in any twelve month period.
20. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.
21. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
22. The Facility was confining approximately 640,992 laying hens at the time of the October 2010 EPA inspection. Due to cleaning operations, the Facility was temporarily confining fewer than the Facility's 1,442,232 layer hen capacity.
23. At all times pertinent to this Order, the number of laying hens confined and fed at the Facility was greater than 82,000 and the Facility used something other than a liquid manure handling system. 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).
24. The design, construction, operation, and/or maintenance of Respondent's facility resulted in the presence of chicken manure in areas exposed to precipitation, which lacked adequate runoff controls, lacked impervious surfaces to allow adequate cleaning, and drainage features were present that facilitate the discharge of process wastewater into the unnamed tributary.
25. Respondent has not applied for an NPDES permit for the Facility.

26. The presence of chicken manure in areas exposed to precipitation, which lacked runoff controls to prevent the discharge of manure, litter, and process waste water and the presence of drainage features that facilitate the discharge into the Ditch No. 3, the Iowa River and their tributaries have resulted in conditions in which Respondent proposes to discharge manure and/or process wastewater to a water of the United States. Respondent has not applied for an NPDES permit as required by 40 C.F.R. § 122.23(d)(1). Respondent's failure to apply for an NPDES permit violates Sections 301, 308 and/or 402 of the Clean Water Act, 33 U.S.C. §§1311, 1318 and/or 1342, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 15 through 26 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:

27. Respondent shall immediately and permanently address all conditions at the Facility that have created the duty for Respondent to apply for an NPDES permit. Specifically, Respondent shall design, construct, operate, and maintain the Facility in a manner so that the Facility does not discharge or propose to discharge manure or process wastewater to a water of the United States.
28. Within forty-five (45) days of the effective date of this Order, Respondent shall provide EPA with a written description and supporting documentation of the activities and procedures implemented to ensure that the Facility does not discharge or propose to discharge manure or process wastewater to a water of the United States.
29. If Respondent is unable to design, construct, operate, and maintain the Facility so the Facility does not discharge or propose to discharge manure or process waste water to a water of the United States, 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 design, construction, operation, and maintenance of livestock waste controls.
30. If Respondent intends to apply for an NPDES permit and construct associated runoff controls 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.

31. Upon completion of any necessary 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

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 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.

3/14/11
Date

Karen Flournoy
Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division

3/15/11
Date

J. Daniel Breedlove
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 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 to the following:

William S. Smith
Registered Agent: DeCoster Enterprises, LLC
604 Locust Street, Suite 1000
Des Moines, Iowa 50309

Heath Blau
Farm Manager
DeCoster Enterprises, LLC
2674 Highway 69
Galt, Iowa 50101

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. Jeff Vansteenburgh
Iowa Department of Natural Resources
Field Office #2
2300 15th Street SW
Mason City, Iowa 50401

 _____

3/14/11
Date