

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 NPDES permit issued pursuant to that Section.

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. Part 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.

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 AFO 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)(i) as an animal feeding operation that stables or confines as many as, or more than, “700 mature dairy cows, whether milked or dry.”

12. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, an owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur. 40 C.F.R. § 122.23(d)(1).

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 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

15. Respondent owns and operates an animal feeding operation ("Facility") that is located in Section 10 of Township 94 North, Range 45 West, in Sioux County, Iowa.

16. The Facility confines and feeds or maintains dairy cows for a total of 45 days or more in any twelve-month period.

17. Neither crops, vegetation, forage growth, nor post harvest residues are 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), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Inspectors from EPA inspected Respondent's Facility on April 22, 2009, to determine Respondent's compliance with the CWA.

20. At the time of the April 22, 2009, inspection, the Facility was confining approximately 1,260 head of dairy cows. The number of dairy cows 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).

21. At the time of the April 22, 2009, inspection, Respondent did not have a NPDES permit for the Facility. To date, Respondent has not applied for a NPDES permit.

22. Manure, litter, or process wastewater from Respondent's facility flows through several different discharge paths into a tributary of the Orange City Slough. The tributary flows approximately 1/4 mile to its confluence with the Orange City Slough.

23. The Orange City Slough and its tributary are waters of the United States, as defined by 40 C.F.R. § 122.2.

24. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the Orange City Slough and its tributary.

25. On November 24, 2009, EPA personnel conducted a compliance sampling inspection of the Facility. Samples taken by the inspectors during the inspection demonstrated that pollutants from the Facility were discharging to a tributary of the Orange City Slough.

26. The ongoing flow of manure, litter, or process wastewater from Respondent's Facility to Orange City Slough 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.

CONSENT AGREEMENT

27. Respondent admits the jurisdictional allegations in this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

28. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

29. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

30. Respondent and Complainant each agree to bear their own costs and attorney's fees.

31. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Penalty

32. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of \$26,288.00, plus interest of \$121.24 over a period of one year, for a total payment of \$26,409.24. The total civil penalty of \$26,409.24 shall be paid in four installments. The first payment of \$6,602.31 is due within thirty (30) days of the effective date of this CA/FO. Respondent shall pay the second payment of \$6,602.31 no later than July 1, 2010. Respondent shall pay the third payment of \$6,602.31 no later than October 1, 2010. Respondent shall pay the fourth payment of \$6,602.31 no later than January 1, 2011. Payments of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must include the docket number and the name of the case. The checks must be remitted to:

U.S. EPA Region 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

33. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this CA/FO may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

34. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

35. Respondent certifies by the signing of this CA/FO that Respondent's facility is scheduled to be in compliance with all requirements of Sections 301 and 402 of the CWA, and all regulations promulgated thereunder, pursuant to the terms of EPA's Administrative Compliance Order, docket number CWA-07-2009-0091.

36. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to defend against such actions on any basis in law or fact.

37. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

38. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

March 10 - 2010
Date

Jim Stoutjesdyk

For the United States Environmental Protection Agency - Region 7

3-17-10
Date

Karen A. Flourney
William A. Spratlin
Director
Water, Wetlands and Pesticides Division

3.18.10
Date

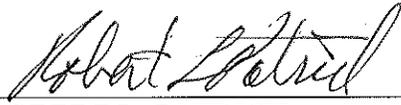
Chris Muehlberger
Chris Muehlberger
Assistant Regional Counsel

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.

Date: May 4, 2010



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Stoutjesdyk Dairy, LLC, Respondent
Docket No. CWA-07-2010-0070

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jim Stoutjesdyk
Stoutjesdyk Dairy, LLC
3265 460th Street
Maurice, Iowa 51036

and

Eldon L. McAfee
Beving, Swanson & Forrest, P.C.
321 E. Walnut, Suite 200
Des Moines, Iowa 50309

Dated: 5/4/10



Kathy Robinson
Hearing Clerk, Region 7