



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP - 6 2011

Ref: 8ENF-W-NP

CERTIFIED MAIL#:
RETURN RECEIPT REQUESTED

John Peila, Registered Agent
Diamond J. Cattle, LLC
2714 South Haynes Ave.
Miles City, MT 59301

Re: Diamond J. Cattle, LLC Inspection Report
Findings of Violation and Administrative
Order for Compliance
Docket No. CWA-08-2011-0024

Dear Mr. Peila:

On April 12, 2011, the United States Environmental Protection Agency (EPA) performed an inspection of the cattle feedlot located at Silo Loop, Kinsey, MT. A copy of the report from the inspection (report) is enclosed. Please pay special attention to the Summary of Findings section of the report. Please note that the EPA inspector discussed his observations and concerns during the exit interview.

Also enclosed is an EPA Region 8 administrative order (Order) that finds that, Diamond J. Cattle, LLC (the Respondent) has violated the Clean Water Act (the CWA) by discharging pollutants without a permit. The Order also directs the Respondent to come into compliance with the CWA. EPA's authority for such action is provided under § 309(a) of the CWA, 33 U.S.C. § 1319(a), which authorizes the Administrator of the EPA to issue an order to any person found to be in violation of § 301 of the CWA, among others, or in violation of any condition or limitation implementing such sections in a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA or an authorized State. The enclosed order is also issued pursuant to § 308(a) of the CWA, 33 U.S.C. § 1318(a), which authorizes the EPA to require, among other things, reports and information to carry out the objectives of the CWA.

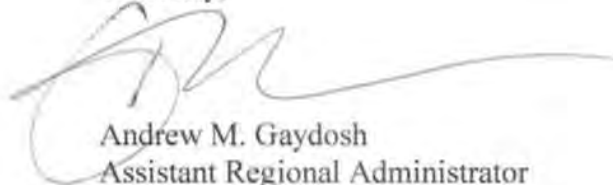
The CWA requires the EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA, 33 U.S.C. § 1319, authorizes civil judicial penalties for violating an order issued under § 309(a) of the CWA. The CWA authorizes a variety of possible enforcement actions for noncompliance with the CWA, including civil or criminal actions, administrative penalty actions, and, in some cases following a criminal conviction, debarment from Federal contracts and/or loans. Additionally, EPA may take an enforcement action if this Order is violated. Please also be advised that the issuance of this Order does

not preclude any civil lawsuit, criminal prosecution, or administrative penalty assessment for the violations cited in the Order or for any other violations of the CWA.

If the Respondent is a small entity, you may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet useful. It contains information on compliance assistance resources and tools available to small entities. SBREFA does not eliminate the responsibility to comply with the Order or the CWA.

Please review the report and the order carefully and ensure that all of the requirements in these documents are fully and timely completed. If you have any questions, the most knowledgeable people on my staff are Jean Belille, Enforcement Attorney, at 303-312-6556 and Seth Draper, Environmental Scientist, at 303-312-6763. We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: 1) Administrative Order for Compliance
2) Inspection Report, Photo Log, 3560 Form, Summary of Findings
3) SBREFA Information Sheet
4) SPCC Guidance Sheet

cc: Kari S. Smith, MDEQ



Printed on Recycled Paper

ADDRESSES:

Kari S. Smith, Supervisor
Compliance and Technical Support Section
Water Protection Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

Bcc: Jean Belille
Seth Draper



2011 SEP -6 PM 2: 08

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

EPA REGION VIII
HEALTH, SAFETY & ENVIRONMENTAL CLERK

IN THE MATTER OF:

John Peila
2714 South Haynes Ave
Miles City, MT 59301

and

Diamond J Cattle, LLC
Silo Loop
Kinsey, MT

Respondents.

ADMINISTRATIVE
ORDER FOR COMPLIANCE

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

Docket No. CWA-o8-2011-0024

I. PRELIMINARY STATEMENT

1. This Administrative Order for Compliance (Order) is issued pursuant to § 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by any person found to be in violation of §§ 301 or 308 of the Act, among others, or in violation of any permit condition or limitation implementing § 402 of the Act. This order is also issued pursuant to § 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require submission of information to determine compliance with the Act. These authorities have been delegated to the Regional Administrator of EPA Region 8 and redelegated to the undersigned official.

2. Respondent Diamond J Cattle, LLC (Respondent) is a Montana corporation having a business address of PO Box 520, Miles City, MT, 59301. Its registered agent for service of process is John Peila. The mailing address for its registered agent is 2714 South Haynes Ave, Miles City, MT 59301.

3. Respondent owns and/or operates an animal feeding operation located at Silo Loop, Kinsey, MT (the facility).

II. STATUTORY AND REGULATORY BACKGROUND

4. Section 301 of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.
5. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA and, under certain circumstances, authorized states, to permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
6. EPA has approved the State of Montana's NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).
7. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."
8. "Pollutant" is defined by § 502(6) of the Act, 33 U.S.C. § 1362(6), to include, among other things, biological material and agricultural waste discharged into water.
9. "Point source" is defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged."
10. To implement § 402 of the Act, EPA promulgated regulations codified at 40 C.F.R. part 122. According to 40 C.F.R. § 122.23(d), the owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges. *Id.*
11. "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.
12. "Concentrated animal feeding operation" or "CAFO" is defined in 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or a Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
13. "Medium CAFO" is defined at 40 C.F.R. § 122.23(b)(6) to include an animal feeding operation that stables or confines 300 to 999 cattle other than mature dairy cows or veal calves.

14. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include, among other things, interstate waters and tributaries thereto.

15. "Process wastewater" is defined in 40 C.F.R. § 122.23(b)(7) as water "directly or indirectly used in the operation of the AFO for any 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." *Id.*

16. "Mortality handling" is defined in 40 C.F.R. § 412.37(a)(4) as "Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to § 412.31(a)(2) and approved by the Director are designed to handle mortalities."

17. The Montana Department of Environmental Quality (MDEQ) is the agency within the state of Montana that is authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs to enforce NPDES violations.

III. FINDINGS OF VIOLATION

18. On April 12, 2011, two EPA inspectors inspected the facility and observed the following:

- a. Respondent's facility is located 300 feet from the Yellowstone River in Custer County Montana. The facility's northern border is formed by a branch of the irrigation ditch, known as Kinsey Lower Canal. An unnamed drainage ditch on the respondent's property flows 450 feet to the Yellowstone River.
- b. the facility placed cattle mortalities in the unnamed drainage ditch,
- c. the unnamed drainage ditch contained flowing water.

19. The unnamed drainage is at least a seasonal waterway. It flows to the Yellowstone River, which is an interstate, navigable-in-fact waterway. The unnamed drainage is a tributary to the Yellowstone River, therefore, a water of the United States.

20. The Yellowstone River and the unnamed drainage are waters of the United States as defined in 40 C.F.R. § 122.2.

21. The facility confines and feeds or maintains cattle for a total of 45 days or more in any 12-month period.
22. Crops, vegetation, forage growth, and post harvest residues are not sustained in the normal growing season over any portion of the facility's feeding areas.
23. The facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
24. The facility was confining and feeding approximately 600 head of cattle at the time of the EPA inspection. The facility has a capacity for 900 head of cattle.
25. The number of cattle confined at the facility is between 300 and 999 and the facility discharged pollutants, in the form of mortalities, into an unnamed drainage which flows directly into the Yellowstone River, a water of the United States. Therefore, the facility is a CAFO as defined in 40 C.F.R. § 122.23(b)(2) and section 502(14) of the Act, 33 U.S.C. § 1562(14), and a Medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6).
26. Respondent is a "person" within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).
27. Respondent has not applied for or received coverage under an NPDES § 402 permit as required under 40 C.F.R. § 122.23.
28. Respondent has discharged pollutants from the facility to waters of the United States without an NPDES permit, in violation of § 301(a) of the Act, 33 U.S.C. § 1311(a).

IV. ORDER

Based on the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, Region 8, it is hereby ORDERED as follows:

1. Respondent shall immediately cease and desist discharging pollutants into waters of the United States unless such discharges are in accordance with a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.
2. Within ten (10) calendar days of receipt of this Order, Respondent shall submit to EPA written notice of its intent to comply with the requirements of this Order.
3. Respondent shall immediately conduct daily visual monitoring of all potential sources of

discharges containing, manure, waste silage, and/or feed to waters of the United States from the facility. Monitoring locations shall include but are not limited to: southern boundary of the facility, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, and mortality piles.

4. Respondent shall immediately develop and maintain a written monitoring log containing the following information for each area monitored as required by the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondent shall maintain the monitoring records at the facility for at least three (3) years after the date of this Order and make them available for inspection or copying upon request by any authorized representatives of EPA and the MDEQ.

5. Respondent shall immediately conduct daily monitoring of precipitation at the facility, using a rain gauge. Respondent shall record and maintain records of precipitation amounts with the monitoring records required by this Order.

6. For each observed discharge of any agricultural waste or other pollutant(s) from the facility that may enter any water of the United States, Respondent shall:

- a. Within two (2) hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to a laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R., part 136 for fecal coliform, 5-day Biochemical Oxygen Demand (BOD5), Ammonia, Nitrate-Nitrite, and Total Suspended Solids;
- b. Submit to EPA and MDEQ with fifteen (15) calendar days of the discharge a written report containing:
 - 1) date and time of the discharge;
 - 2) location of the discharge;
 - 3) origin of the discharge;
 - 4) estimated volume of the discharge;
 - 5) daily rainfall measurements for the 30 days prior to the discharge event;
 - 6) sample analysis results of the discharge; and,
 - 7) steps taken to prevent reoccurrence of the discharge.

Timely reporting of an unpermitted discharge does not authorize any such discharge. Also, any reporting of a discharge does not alleviate any further EPA or MDEQ enforcement action.

7. Within fourteen (14) calendar days of receipt of this Order, Respondent shall submit a

written report to EPA and MDEQ of the actions the Respondent has taken to remove the mortalities placed within the unnamed drainage.

8. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide to EPA and MDEQ a Best Management Practice (BMP) implementation plan (plan) for review and approval. The plan shall set forth measures that the Respondent will take to prevent the discharge of pollutants from the facility to waters of the United States. The measures must include, but need not be limited to: southern boundary of the facility, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, and mortality piles. The plan shall also include a schedule for completing implementation of the measures within sixty (60) days of approval of the plan and schedule by EPA. Respondent shall respond to any EPA comments on the plan and schedule within fifteen (15) days of receipt of the comments. Upon approval by the EPA, the schedule will be incorporated into this Order as an enforceable requirement.

9. Unless Respondent demonstrates to EPA's satisfaction that the Respondent will not discharge from the facility to waters of the United States, shall within ninety (90) days of receipt of this Order, submit a complete application for an NPDES permit to MDEQ. The application must include a site-specific Nutrient Management Plan (NMP) that meets the requirement of 40 C.F.R. § 122.42(e). Additionally, the facility must meet the MDEQ requirements specified in the Administrative Rules for Montana 17.30.1330(1).

10. Respondent shall provide each notification or report required by this Order, and a copy of the permit application referenced in paragraph 9, above, to the following:

Seth Draper
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Draper.seth@epa.gov
Phone: 303-312-6763

and

Kari S. Smith, Supervisor
Compliance and Technical Support Section
Water Protection Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

11. Respondent shall submit to EPA and MDEQ monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10th day of every month, until EPA or MDEQ notifies the Respondent, in writing, that it no longer requires such reports. Each report shall include an update of the progress of the plan required by Par. 8 of this Order and local rainfall amounts for the previous month, as well as copies of all monitoring logs and records required by this Order.

12. Respondent shall allow access to the facility by any authorized representatives of EPA and the MDEQ, including but not limited to any of the agencies' contractors, upon proper presentation of credentials, to the facility and to records relevant to this Order for the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

13. This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the facility, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

14. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.

15. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$32,500 per day for each violation which occurred from March 15, 2004, through January 12, 2009, and \$37,500 per day for each violation thereafter of § 301 of the Act, 33 U.S.C. § 1311, or of any order issued by EPA under § 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, § 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

16. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

17. This Order shall be effective upon receipt by Respondent.

DATED this 6th day of September, 2011.

A handwritten signature in dark ink, appearing to read 'AG', is written over a horizontal line.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice