

Statutory and Regulatory Framework

6. 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. 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.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as the “waters of the United States,” which in turn has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

9. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

10. The Iowa Department of Natural Resources (“IDNR”) is the state agency in Iowa with the authority to administer the federal NPDES program, pursuant to Section 402 of the CWA and applicable implementing regulations.

11. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

Allegations of Fact and Conclusions of Law

12. Respondent is and was at all relevant times a corporation, so is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent owns and/or operates a heifer feeding and swine operation on a property with the legal description of the NE ¼ NE 1/4 of Sec. 06, T097N, R42W, and a street address of 2723 Monroe Avenue, Sheldon, Iowa 51201 (the “Facility”).

14. On March 22, 2022, EPA personnel conducted a compliance evaluation inspection of the Facility.

15. During the inspection, the EPA’s inspectors observed that process wastewater from confinement pens holding cattle flows into three basins (Basins 1, 2, and 3). Process wastewater flows first into Basins 1 and 2, where solids are allowed to settle, and then into Basin 3 via underground piping.

16. During the inspection, Shawn Wassenaar, the President of Westside Nurseries, stated that he has never had to remove process wastewater from the basins, and that because the process wastewater evaporates from the basins, land application of the wastewater is not necessary.

17. During the inspection, Mr. Wassenaar further stated that manure solids were cleaned from Basin 3, but not from Basins 1 or 2, in the fall of 2021.

18. The Facility is an animal feeding operation (“AFO”) as defined by 40 C.F.R. § 122.23(b)(1) because (i) it stables, confines, feeds, or maintains non-aquatic animals – specifically, cattle – for a total of 45 days or more in any 12-month period and (ii) “[c]rops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the [Facility].”

19. At the time of the March 22, 2022, EPA inspection, the Facility confined approximately 1300 cattle other than mature dairy cows or veal calves and 1000 swine.

20. The Facility is a large Concentrated Animal Feeding Operation (“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), because the number of cattle other than mature dairy cows or veal calves confined and fed at the Facility is greater than 999 head.

21. The Facility has satisfied the definition of a large CAFO since February 2021. Before February 2021, the Facility confined 300 to 999 cattle other than mature dairy cows or veal calves.

22. Discharge from the Facility flows approximately 0.66 miles to Otter Creek, a perennial stream.

23. Otter Creek flows approximately 15 miles to the Little Rock River, also a perennial stream.

24. On October 6, 2022, EPA Region 7 sent an information request to Respondent pursuant to Section 308 of the CWA. Respondent provided the requested information on November 3, 2022.

25. As relevant here, Respondent has disclosed the following in response to that information request and in subsequent discussion with EPA:

a. The current existing total storage volume for Basins 1, 2, and 3 combined is 1,202,065 gallons. The basins are interconnected so they will back up into each other.

b. Basins 1 and 2 were believed to have been built in 2013, and Basin 3 was believed to have been built in 2017. No further information about their design and construction was available.

c. Respondent will apply for an NPDES permit by February 28, 2023, and intends to obtain it by the late spring of 2023.

d. Respondent had obtained a preliminary design for a new runoff basin from ProAg Engineering, Inc., and attached a design drawing to the response. Pending permit

approval, Respondent indicated the basin was expected to be constructed by August 1, 2023.

e. As stated on the ProAg Engineering preliminary design drawing, a 25-year, 24-hour rainfall event would total 5 inches of rain and would lead to 2,506,167 gallons of runoff from the Facility.

26. Respondent does not and, at all relevant times, did not have an NPDES permit authorizing discharges of pollutants from the Facility.

27. The Facility has discharged in the past during rainfall events exceeding 2.68 inches, and will continue to discharge as a result of rainfall events greater than 2.68 inches unless additional containment is constructed. Multiple such rainfall events have occurred in the past five years.

28. Discharges of process wastewater from the Facility to Otter Creek and to the Floyd River constitute unauthorized discharges of pollutants from a point source to waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and its implementing regulations.

Order for Compliance on Consent

29. Based on the Findings of Fact and Conclusions of Law 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), the EPA hereby orders the Respondent, and the Respondent hereby agrees, to take the actions described below.

30. Immediately upon receipt of this Order, Respondent shall cease all discharges of manure, litter, or process wastewater from the Facility to waters of the United States and comply with all requirements of the CWA.

31. 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 construction and operation of livestock waste controls.

32. Beginning thirty (30) days after receipt of this Order and continuing every ninety (90) days until Respondent submits a Notice of Construction Completion to the EPA, Respondent shall submit written progress reports to the EPA on the construction of runoff control structures at the Facility. The monthly reports shall describe the construction and related activities that occurred at the Facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, any problems encountered or anticipated, and how these problems were/will be addressed.

33. Within thirty (30) days of completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to the EPA. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

34. Respondent shall obtain an NPDES permit and complete construction of all additional runoff control features by October 16, 2023.

35. Within fifteen (15) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken to comply with the CWA and the terms of this Order.

Submittals

36. All submittals to EPA that are required of Respondent by this Order shall, where possible, be made by electronic submission to *hamera.don@epa.gov*.

Don Hamera
U.S. Environmental Protection Agency – Region 7
Enforcement and Compliance Assurance Division
11201 Renner Boulevard
Lenexa, Kansas 66219

37. Electronic submissions to the EPA will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy to the mailing addresses provided above.

38. All submissions to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official, as described in 40 CFR 122.22:

I certify that Westside Nurseries, Inc. has complied with all the applicable requirements of the Order for Compliance. I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

39. 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 to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

40. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d), or (g) of the CWA, 33

U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

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

Access and Requests for Information

42. Nothing in this Order shall limit the EPA's right to obtain access to and/or to inspect the facility and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318, and/or any other authority.

Severability

43. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

44. This Order shall be effective upon signature by the EPA. Any amendments shall become effective and enforceable on the date that the amendment is signed by all parties. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from the effective date.

Modification

45. At the EPA's sole discretion, extensions of the compliance schedule/deadlines required by this Order may be made by the EPA by written notice to Respondent, without further formal amendment to the Order. The EPA will not unreasonably withhold consent for a requested extension. All other modifications to this Order may only be made by mutual agreement of the parties, pursuant to a written amendment signed by each party.

46. 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 the original Order.

Termination

47. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA.

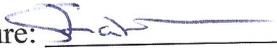
Signatories

48. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this Order. This Order may be signed in part and counterpart by each party.

Electronic Service

49. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: *swassenaar@nethc.net*.

For Respondent, Westside Nurseries, Inc.:

Signature: 

Date: 2-17-2023

Name: Sam Wassner

Title: President

For Complainant, the U.S. Environmental Protection Agency, Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Natasha Goss
Attorney-Advisor
Office of Regional Counsel

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Regional Hearing Clerk:

U.S. Environmental Protection Agency Region 7
R7_Hearing_Clerk_Filings@epa.gov

For Complainant:

Natasha Goss
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
goss.natasha@epa.gov

Don Hamera
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7
hamera.don@epa.gov

For Respondent:

Shawn Wassenaar
President, Westside Nurseries
2723 Monroe Avenue
Sheldon, Iowa 51201
swassenaar@nethtc.net

Date

Signature