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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)	
)	
)	Docket No. CWA-07-2010-0103
)	
PLATTE VALLEY FEEDERS, LLC.)	
)	
KEARNEY, NEBRASKA)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent,)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

Consent Agreement and Final Order

The United States Environmental Protection Agency, Region 7 (EPA) and Platte Valley Feeders, LLC, (Respondent), have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. Thus, this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged violations of the National Pollutant Discharge Elimination System (NPDES) permit for Respondent's feedlot in Buffalo County, Nebraska.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

3. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged from a point source only in accordance with the terms of an NPDES permit issued pursuant to that section.

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Nebraska Department of Environmental Quality (NDEQ) is the agency within the state of Nebraska authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

6. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to commence an action for administrative penalties against any person who violates Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations

7. Respondent owns and/or operates an animal feeding operation ("Facility") located in the N ½ of Section 15 in Township 9 North, Range 15 West, in Buffalo County, Nebraska.

8. Respondent is a limited liability company and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

9. On March 17 and 19, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility.

10. At the time of the inspection, and at all times pertinent to this Consent Agreement and Final Order, the Facility was a "concentrated animal feeding operation" and a "point source" as defined by the CWA and implementing regulations.

11. Respondent was issued an NPDES General Permit on July 22, 2005. The 2005 permit was administratively extended until NDEQ issued a superseding NPDES General Permit on April 16, 2009. At all times relevant to this Consent Agreement and Final Order, Respondent operated under the requirements and benefits of an NPDES permit.

Alleged Violations

12. The allegations set forth in paragraphs 1 through 11 are incorporated herein.
13. The NPDES permit, in conjunction with the Respondent's Nutrient Management Plan, requires all collected process wastewater to be land applied at agronomic rates.
14. The Facility's land application records indicate that during 2008 the application of collected process waste water greatly exceeded the agronomic rate required for Respondent's land application area.
15. The application of feedlot process waste water in excess of agronomic rates is a violation of the Respondent's NPDES permit and as a result is a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

CONSENT AGREEMENT

16. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
17. Respondent neither admits nor denies the factual allegations and alleged violations contained in this Consent Agreement and Final Order.
18. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.
19. Respondent and Complainant each agree to bear their own costs and, if applicable, any attorney's fees.
20. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
21. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Twenty Thousand Seventy-Five Dollars and Six cents (\$20,075.06). EPA permits Respondent to pay the penalty on an installment schedule. The penalty sum includes a base penalty of Twenty Thousand Dollars (\$20,000) plus pre-calculated interest. The payments shall be as follows:

A. Respondent shall pay an initial installment of Five Thousand Dollars (\$5,000) within thirty (30) days of the Effective Date of the Final Order. The remainder of the penalty shall be paid quarterly thereafter from that payment date in three installments of Five Thousand and Twenty-five Dollars and Two Cents (\$5,025.02).

B. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently one percent per annum for the period January 1, 2010, through December 31, 2010), compounded daily.

C. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

D. The parties agree that Respondent shall not be subject to a penalty for early payment of the penalty.

22. Respondent shall initiate payment of the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letters and the checks shall simultaneously be sent to:

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

and

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

23. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order 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.

24. The penalty payment made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

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

26. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342. The effect of the settlement described in paragraph 25 above is conditioned upon the accuracy of this certification.

27. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.


28. 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 Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

30. 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:

5/28/2010
Date


Mr. Robert Beck

In the Matter of Platte Valley Feeders
Consent Agreement/Final Order

For the United States Environmental Protection Agency - Region 7

7/6/2010
Date

J. Daniel Breedlove
J. Daniel Breedlove
Assistant Regional Counsel


7/6/2010
Date

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

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.



ROBERT L. PATRICK
Regional Judicial Officer

Date: July 14, 2010

IN THE MATTER OF Platte Valley Feeders, LLC, Respondent
Docket No. CWA-07-2010-0103

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:

J. Daniel Breedlove
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:

Robert Beck
Platte Valley Feeders, LLC
5622 East 78th Street
Kearney, Nebraska 68847

Dated: 7/14/10


Kathy Robinson
Hearing Clerk, Region 7