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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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

BEFORE THE ADMINISTRATOR

)	
)	Docket No. CWA-07-2009-0063
)	
KNIGHT FEEDLOT, INC.)	
RICE COUNTY, KANSAS)	
)	
Respondent)	FINDING OF VIOLATION
)	ORDER FOR COMPLIANCE
)	
)	
Proceedings under)	
Section 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. § 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 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 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 is Knight Feedlot, Inc., a Kansas corporation, which owns and operates an animal feeding operation permitted to confine 22,000 beef cattle near Lyons, Kansas. The animal feeding operation (“Facility”) is located in the E ½ of Section 23 in Township 19 South, Range 8 West in Rice County, Kansas.

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 National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
5. Section 504(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. § 122. Under 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 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 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, 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 CAFO in accordance with 40 C.F.R. § 122.23(b)(3).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
12. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

13. The Kansas Department of Health and Environment ("KDHE") is the agency within the State of Kansas authorized to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an animal feeding operation that is located in the E ½ of Section 23 in Township 19 South, Range 8 West in Rice County, Kansas.
15. On December 17, 2008, EPA personnel conducted a compliance evaluation inspection of the Facility.
16. The Facility confines and feeds or maintains cattle for a total of forty-five (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. At the time of the EPA inspection, the Facility was confining approximately 10,200 head of cattle and the Facility is permitted to confine 22,000 head. The number of cattle confined and fed at the Facility is greater than 1,000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).
20. Respondent is currently operating under a NPDES permit (KS0116157) which was effective on September 28, 2006, and expires September 27, 2011.
21. Owl Creek, the stream adjacent to Respondent's feedlot, is a water of the United States.
22. At the time of the December 17, 2008, EPA inspection, Respondent was also operating a cattle operation near the corner of Avenue J and 18th road (East Pens). This feeding operation is owned by Knight Farms, Inc. but is operated by Respondent. The East Pen gates were open during the inspection and approximately 60 head of cattle had access to feed bunks within the pens but also had access to graze in the adjacent triticale field. The cattle also had access to Owl Creek.

Findings of Violation

Count 1 (Feed Storage Area)

23. During the December 17, 2008, inspection, EPA inspectors observed that Respondent's feedstock storage area lacks runoff control structures enabling Respondent to prevent discharges of precipitation induced runoff to Owl Creek, a water of the United States.
24. Respondent's NPDES permit requires Respondent to collect, retain, and dispose of all precipitation induced runoff and/or dry weather wastewater in an approved collection and retention structure capable of preventing water pollution. Furthermore, 40 C.F.R. § 412.31 (effluent limitations applicable to NPDES permitted large CAFOs) requires there must be no discharge of feedlot pollutants from the production area into waters of the United States unless the CAFO is designed, constructed, operated, and maintained to contain all runoff from a 25-year, 24-hour rainfall event.
25. Respondent's feedstock storage area is part of the CAFO's production area. *See* 40 C.F.R. §122.23(b)(8).
26. Respondent's failure to collect all process waste water in an approved collection structure is a violation of Respondent's NPDES Permit, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and the discharges to Owl Creek from the feedstock storage area are violations of the effluent limitations established by 40 C.F.R. § 412.31.

Count 2 (Storage Capacity)

27. Respondent's NPDES permit requires that water pollution control facilities be operated and maintained to ensure structural stability and with sufficient storage capacity. Specifically, the permit requires all waste retention structures to have adequate operating levels to contain process wastewater for a two-week period plus precipitation induced flow from a 25-year, 24-hour storm event.
28. According to Respondent's operational records, on dates between January 2007 and November 2008, Respondent failed to maintain adequate operating levels as required by its NPDES permit and failed to dispose of waste water contained within its runoff storage structures on days defined as suitable for land application.
29. Respondent's failure to maintain adequate operating levels and failure to land-apply waste water on days suitable for land application are violations of Respondent's NPDES Permit, and as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3 (Recordkeeping)

30. Respondent's NPDES permit states that available storage depth shall be recorded daily whenever the water level infringes on the required operating levels or the required storage capacity is not available in any retention structure. Daily recording of storage depth must continue until the required storage capacity is again available.
31. According to Respondent's operational records for January 2007 to November 2008, records were not kept daily when operating levels were exceeded as required by the NPDES permit.
32. Respondent's failure to record available storage depth when water level exceeded the required operating levels is a violation of Respondent's NPDES Permit, and as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Order For Compliance

Based on the Findings of Violation 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), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

33. Respondent shall immediately comply with the CWA by ceasing discharges to Owl Creek from the feedstock storage area. If Respondent intends to continue to use the feedstock storage than its use must comply with the discharge limitations established by the NPDES permit and 40 C.F.R. § 412.31. In particular, the area must be designed, constructed, operated, and maintained so that Respondent is able collect, retain, and dispose of all precipitation induced runoff and/or dry weather wastewater in an approved collection and retention structure capable of preventing water pollution.
34. Respondent shall ensure that waste water levels in storage structures are in compliance with the storage structure operating levels in Respondent's NPDES permit. On an ongoing basis, Respondent shall remove waste water from the storage structures in a timely manner so that the Facility remains in continuous compliance with storage structure operating level requirements. Respondent shall comply with all applicable requirements regarding the proper land application and transfer of manure and process waste water.
35. Respondent shall ensure that it meets or exceeds the inspection and record keeping requirements of its NPDES permit. This includes, but is not limited to, the monitoring of lagoon operating levels, sampling associated with the transfer of manure to another party, land application recordkeeping, and the completion and submittal of annual reports.

36. Within fifteen (15) days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions that Respondent has taken and will take to comply with its NPDES permit, the CWA, and the terms of this Order.
37. On a monthly basis for one year, Respondent shall submit to EPA copies of all retention structure level, precipitation, and land application monthly records, etc. (Operations Reports) that Respondent is required to keep pursuant to Respondent's NPDES permit.
38. The first monthly report shall be submitted to EPA on June 10, 2009, and subsequent reports shall be submitted on the 10th day of each month until the final report which is due June 10, 2010.

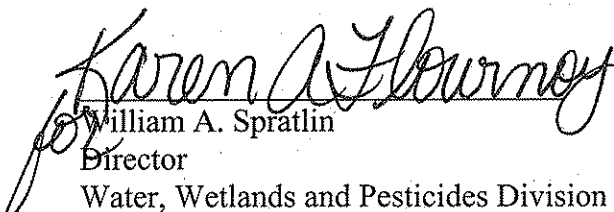
Effect of Order

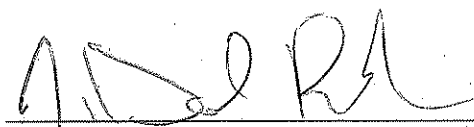
39. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
40. 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.
41. 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.
42. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance 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.
43. 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.
44. All submissions to EPA required by this Order shall be sent to:

Donald Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

45. 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.
46. 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).
47. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 4-28-09


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


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

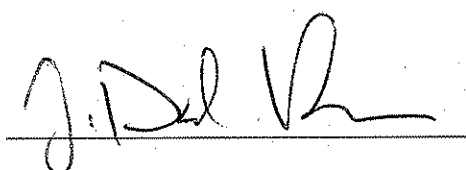
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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:

Kenneth E. Knight
Knight Feedlot, Inc.
Route 1
Lyons, Kansas 67554

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 Kansas:

Karl Mueldener, Director
Bureau of Water
Kansas Department of Health and Environment
1000 S.W. Jackson Street, Suite 420
Topeka, Kansas 66612



4-29-09

Date