

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5



IN THE MATTER OF:

Hall's Calf Ranch, LLC
Mr. J. Hall
E 2304 County Road F
Kewaunee, Wisconsin 54215

**Proceeding to Assess a Class II Civil
Penalty under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)**

Docket No. CWA-05-2015-0008

Respondent.

CONSENT AGREEMENT AND FINAL ORDER

JURISDICTIONAL ALLEGATIONS

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a).
2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.
4. Respondent is Hall's Calf Ranch, LLC, a Wisconsin limited liability company (Respondent). Respondent is a "person" as that term is defined at section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 501.2.
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

DEFINITIONS

7. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
8. "Animal Feeding Operation" means "a lot or facility where . . . (i) Animals (other than aquatic 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, (ii) Crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 C.F.R. § 122.23(b)(1).
9. "Concentrated Animal Feeding Operation" or "CAFO" means, among other things an "...AFO that is defined as a Large CAFO or as a Medium CAFO... Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common ownership are considered to be a single

AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use common area or a system for the disposal of wastes.”40 C.F.R. § 122.23(b)(2).

10. “Discharge” or “discharge of a pollutant” means, among other things, any addition of any pollutant to navigable waters from any point source. See Sections 502(12) and 502(16) of the CWA, 33 U.S.C. §§ 1362(12), (16); 40 C.F.R. § 122.2.
11. “Land application area” means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.
12. “Large CAFO” means an Animal Feeding Operation that stables or confines as many as or more than the numbers of animals specified in any of the following ranges: 1,000 cattle other than dairy cows or veal calves; 700 mature dairy cows; 2,500 swine each weighing 55 pounds or more; or 10,000 swine each weighing less than 55 pounds. 40 C.F.R. § 122.23(b)(4).
13. “Manure” means “manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.” 40 C.F.R. § 122.23(b)(5).
14. “Navigable waters” means the waters of the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
15. “Nutrient Management Plan” means the plan that contains the required elements as described in 40 C.F.R. 122.42 (e)(1).
16. “Overflow” means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.

17. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
18. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... [or] Concentrated Animal Feeding Operation ... from which pollutants are or may be discharged." Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
19. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
20. "Process wastewater" means water directly or indirectly used in the operation of the Animal Feeding Operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other Animal Feeding Operation 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.
40 C.F.R. § 122.23(b)(7).
21. "Production area" means that part of the site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to

lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

40 C.F.R. § 122.23(b)(8).

22. "Site" shall mean the facility or facilities owned or operated by Respondent located at E 2304 County Road F, Kewaunee, Wisconsin, 54216, which includes the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.
23. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
 - a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
 - d. all impoundments of waters otherwise defined as waters of the United States under this definition; and
 - e. tributaries of waters identified in paragraphs (a) through (d) of this definition.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

24. For purposes of this Order, Respondent stipulates that U.S. EPA has jurisdiction over the subject matter of this CAFO and waives any jurisdictional objections it may have.
25. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.
26. By executing this CAFO, the Respondent does not admit liability or admit Complainant's factual allegations set forth in this CAFO. The Respondent's execution to this CAFO does not constitute a waiver or admission of any kind, including without limitation a waiver of any defense, legal or equitable, which Respondent may have in this or any other administrative or judicial proceeding, other than a proceeding to enforce this CAFO.

STATUTORY AND REGULATORY BACKGROUND

27. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
28. Pursuant to the CWA and EPA regulations, the owner or operator of a Concentrated Animal Feeding Operation (CAFO) which discharges must seek coverage under an NPDES permit. 33 U.S.C. § 1318; 40 C.F.R. § 122.23(d)(1). Pursuant to 33 U.S.C. § 1318, the owner must also provide other information as reasonably required by EPA.
29. EPA has authorized the State of Wisconsin to issue NPDES permits under

Section 402(b) of the CWA, 33 U.S.C § 1342(b). The Wisconsin Department of Natural Resources (WDNR) is the NPDES permitting authority for the State of Wisconsin. WDNR refers to its NPDES permits as Wisconsin Pollutant Discharge Elimination System (WPDES) Permits. EPA retains the authority to enforce the CWA in Wisconsin.

ALLEGATIONS OF LIABILITY

30. Respondent is a person who owns or operates a heifer replacement facility located at E 2304 County Road F, Kewaunee, Wisconsin (the Site).
31. The Site is an Animal Feeding Operation because:
 - a. the Site includes lots or facilities where cattle 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, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
32. The Site is a large concentrated animal feeding operation because the site stables or confines as many as or more than 1,000 cattle.
33. On June 22, 2011 and January 11, 2013, personnel from the EPA conducted inspections at the Site.
34. During the inspections, EPA personnel identified process wastewater being discharged to the East Twin River:
 - a. During the June 22, 2011 inspection, EPA observed process wastewater within the Southern Facility flowing into the Main Ditch from the following areas: the Calf Hutches and the Commodity Barn. EPA observed the Main Ditch discharging into the East Twin River.

- b. During the June 22, 2011 inspection, EPA observed process wastewater from Barns 7 and 8 flowing through a culvert and discharging directly into the East Twin River.
 - c. During the June 22, 2011 inspection, EPA observed process wastewater from the calf hutches flowing through the central access road that bisected the hutches into an east and west section. The process wastewater then flowed into the North Ditch. The process wastewater discharged from the North Ditch into the East Twin River.
 - d. During the June 22, 2011 inspection, EPA observed process wastewater from Barn 3 and the bull calf hutches flowing west to a ditch in the tree line. The process wastewater flowed north following the ditch and into a culvert, which flowed into the Main Ditch. The Main Ditch discharges into the East Twin River.
 - e. During the June 22, 2011 inspection, EPA observed process wastewater from Barns 4, 5 and 6 flowing west to the end of the barns where it then changed direction and flowed north into the Main Ditch. The Main Ditch discharges into the East Twin River.
 - f. During the January 11, 2013 inspection, EPA observed process wastewater from the Main Ditch, located within the Southern Facility, discharging into the East Twin River.
 - g. During the January 11, 2013 inspection, EPA was informed by Mr. Hall that a buried perforated tile ran the length of the Main Ditch. The tile collected process wastewater within the Main Ditch. EPA observed the perforated tile discharging process wastewater into the East Twin River.
 - h. During the January 11, 2013 inspection, EPA observed process wastewater from the Calf Hutch Pad Area flowing into the North Ditch, located on the Northern Facility. EPA observed the North Ditch discharging into the East Twin River.
35. The East Twin River flows directly into Lake Michigan.
36. Lake Michigan is a navigable water and a water of the United States.
37. The Site is a point source because it is a large concentrated animal feeding operation that discharged pollutants as defined in Paragraph 19.
38. The discharges described in Paragraph 34 are each a discharge of a pollutant(s).

39. As of the June 22, 2011 inspection, Respondent did not have, and had not applied for, a Wisconsin Pollutant Discharge Elimination System (WPDES) permit for the discharge of pollutants from the site.
40. Respondent was ordered to submit an initial Permit Application to WDNR by March 16, 2012.
41. WDNR public noticed the Hall's Calf Ranch WPDES permit WI-0065013-01-0 on November 9, 2012.
42. By discharging pollutants from the Site without a permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
43. The CWA includes provisions for administrative penalties for violations of the CWA. Specifically, EPA may assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$11,000 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and \$16,000 per day for each violation that occurred after January 12, 2009. An Administrative Penalty action may total up to \$177,500 for actions filed after January 12, 2009 up to December 31, 2013 or up to \$187,500 for actions filed after December 31, 2013.

JUNE 11, 2013 ADMINISTRATIVE ORDER FOR COMPLIANCE

44. EPA originally issued a Section 309(a) Administrative Order to the Respondent on June 11, 2013 for the violations found during the June 22, 2011 and January 11, 2013 inspections. The Order informed Respondent of its right to request a conference within 10 calendar days.
45. Pursuant to the notice which Respondent received in the June 11, 2013 Order, Respondent requested a conference on July 1, 2013. A conference was held at the EPA Region 5 Office in Chicago, Illinois on July 9, 2013 with Respondent, Respondent's attorney and Engineer, and EPA representatives. During the conference, Respondent requested that the changes provided via e-mail on July 1, 2013 be included.
46. Based on the Respondent's comments, EPA issued a modified Order on February 7, 2014. This Order supersedes the June 11, 2013 Order. The February 7, 2014 modified Order dictates the injunctive relief intended to return the Respondent into compliance with the CWA. The status of compliance with the June 11, 2013 Order had not yet been confirmed.

CIVIL PENALTY

47. Based on an analysis of the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of such violations, degree of culpability, economic benefit or saving resulting from such violations, and other factors as justice may require, as specified in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant has determined that an appropriate civil penalty to settle this action is \$42,000. The Respondent may pay this penalty in two payments of \$21,000 each. The final payment shall take place no later than June 30, 2015.

48. Within 30 days after the effective date of this CAFO, Respondent must pay the first installment payment of the \$42,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

49. The check must note the case caption and the docket number of this CAFO.
50. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cheryl Burdett (WC-15J)
Water Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

51. This civil penalty is not deductible for federal tax purposes.
52. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States'

enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue.

GENERAL PROVISIONS

54. This CAFO resolves Respondent's liability, and any liability of the Respondent's owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for only federal civil penalties for the violations and facts alleged in this CAFO.
55. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
56. This CAFO does not affect Respondent's responsibility to comply with the CWA or other applicable federal, state and local laws or regulations.

57. This CAFO is a “final order” for the purposes of any future enforcement action under section 309 of the CWA, 33 U.S.C. § 1319.

58. The terms of this CAFO bind Respondents and Respondent’s owners, parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, successors and assigns.
59. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
60. Each party agrees to bear its own costs and fees, including attorneys’ fees, in this action.
61. This CAFO constitutes the entire agreement between the parties.
62. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, after having been signed by the Regional Administrator and subject to the requirements of section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).
63. Complainant is providing public notice of and reasonable opportunity to comment on the proposed issuance of the CAFO according to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4).

In the Matter of: Hall's Calf Ranch, LLC

Docket Number: CWA-05-2015-0008

U.S. Environmental Protection Agency, Complainant

Date:

January 20, 2015

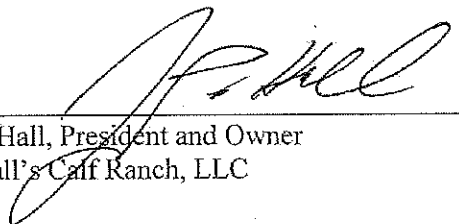
Tinka G. Hyde
Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5

In the Matter of: Hall's Calf Ranch, LLC

Docket Number: CWA-05-2015-0008

Hall's Calf Ranch, LLC, Respondent.

Date: 12-31-2014



J. Hall, President and Owner
Hall's Calf Ranch, LLC

In the Matter of: Hall's Calf Ranch, LLC, Respondent.

Docket Number: CWA-05-2015-0008

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: _____

By: _____

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5