

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

11 MAR 19 AM 9:01

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	Docket No. CWA-07-2011-0061
CROSSROADS CATTLE CO.)	
)	
)	
Respondent,)	FINDINGS OF VIOLATION,
)	ORDER FOR COMPLIANCE
)	
Proceedings under)	
Section 308(a) and 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. §§ 1318(a) and 1319(a)(3))	
)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“Order”) is issued pursuant to the authority of Section 308(a) and Section 309(a)(3) of the Clean Water Act (CWA or Act), 33 U.S.C. §§ 1318 and 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, Crossroads Cattle Co., owns and/or operates an animal feeding operation permitted to confine 5,500 head of cattle near Woodbine, Iowa.

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. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue National Pollutant Discharge Elimination System (NPDES) permits that, among other things, prescribe conditions whereby a discharge of pollutants may be authorized and

establish design, construction, operation, and maintenance requirements for the permit holder.

5. Section 502(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. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include, *inter alia*, biological materials and agricultural waste discharged to water.
7. “Process wastewater” is an agricultural waste defined by 40 C.F.R. § 122.23(b)(7) to include water directly or indirectly used in the operation of an animal feeding operation, including, *inter alia*, spillage or overflow from animal watering systems and any water which comes into contact with any raw materials, products, or byproducts including manure, feed or bedding.
8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), 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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
9. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d)(1), the owner or operator of a concentrated animal feeding operation must apply for an NPDES permit if the concentrated animal feeding operation discharges.
10. “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.
11. “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)(4).
12. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines as many as or more than “1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.”

13. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Iowa Department of Natural Resources (IDNR) is the agency within the State of Iowa with the authority to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background

15. Respondent owns and operates a feedlot (the Facility) that is located in the Southwest ¼ of Section 27 and the Southeast ¼ of Section 28, Township 81 North, Range 42 West, in Harrison County, Iowa.
16. On March 23, 2011, EPA personnel conducted a compliance evaluation inspection of the Facility.
17. The Facility confines and feeds or maintains cattle for a total of 45 days or more in any twelve month period.
18. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.
19. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
20. At the time of the March 23, 2011 inspection, the Facility was confining between 3,200 and 3,500 head of beef cattle.
21. The Facility confines and feeds or maintains as many as or more than 1,000 cattle for a total of 45 days or more in any twelve month period. Therefore, the Facility is a Large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(iii).
22. The Facility is a CAFO as defined by 40 C.F.R. § 122.23(b)(2), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
23. Respondent is currently operating under NPDES permit number IA0080667, which was issued on May 11, 2007, and will expire on May 10, 2012.
24. The Boyer River and its tributaries are waters of the United States, as defined in 40 C.F.R. § 122.2.

Findings of Violation

Count 1

Unauthorized Discharges

25. 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.
26. Section I of Respondent's NPDES permit prohibits the discharge of manure, open feedlot effluent, settled open feedlot effluent, settleable solids or process wastewater (collectively referred to as "manure") into waters of the United States unless: 1) the manure control system is designed, constructed, operated and maintained to contain all manure, including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event; 2) the installed system for the Facility's Settled Open Feedlot Effluent Basin is the system that was designed and approved by its licensed engineer and approved by IDNR; and 3) the production area is operated in accordance with the additional measures and record keeping required by the permit.
27. During the EPA inspection referenced in Paragraph 16 above, the inspector observed that some production areas of the feedlot were not designed, constructed, operated or maintained to contain all manure. Specifically, Pen E-4, the sick pens, the cornstalk/manure storage area and the confinement building lacked runoff controls. Runoff from these areas drains to the east/southeast and enters an unnamed tributary to the Boyer River.
28. Based on the size of the Facility, the distance from the Facility to the unnamed tributary and the Boyer River, and the slope and condition of the land across that distance, process wastewater pollutants from the Facility have and will continue to flow into the Boyer River and its tributaries during precipitation events less than a 25-year, 24-hour rainfall event.
29. The intermittent yet ongoing flow of process wastewater pollutants from uncontrolled production areas at Respondent's Facility to the Boyer River and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Respondent's NPDES permit and of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

Count 2

Failure to maintain adequate storage capacity

30. Section I.A.1. of Respondent's NPDES permit requires that adequate capacity must be provided to collect and store the average annual runoff from all feedlot and nonfeedlot areas that drain into the open feedlot effluent control system. Specifically, the manure control system must be designed, constructed, operated and maintained to contain all manure, open feedlot effluent, settled open feedlot effluent, settleable solids or process wastewater, including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event.
31. Section III.A.4.b. of Respondent's NPDES permit requires that all open surface liquid impoundments must be checked for depth after each rainfall and at least once a week, and Section III.A.4.c. requires that if capacity deficiencies are found, they must be corrected as soon as possible.
32. The inspector's observations during the EPA inspection referenced in Paragraph 16 above, together with information submitted by Respondent, revealed that the Facility has failed to provide adequate capacity to collect and store runoff. Specifically, the Facility allowed the depth of the northwest effluent basin, denominated Holding Pond 1 on the Facility's engineering plans, to exceed the 25-year/24-hour stage limit (sometime referred to as the must-pump level) for all but three months between January 2009 and March 2011. The Facility also allowed the depth of the southeast effluent basin, denominated Holding Pond 2 on the Facility's engineering plans, to exceed the 25-year/24-hour stage limit from January through March 2011, the only months for which records were kept. Respondent failed to correct these capacity deficiencies as soon as possible after discovering them.
33. Respondent's failure to maintain adequate capacity to collect and store runoff from its Facility is a violation of Respondent's NPDES permit and of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and implementing regulations.

Count 3

Failure to maintain adequate records

34. Section V.A.4. of Respondent's NPDES permit requires Respondent to monitor and record the liquid level in the basin daily when the available (unoccupied) storage capacity remaining in the basin is less than 90 percent of that required to maintain the minimum capacity necessary to contain the runoff and direct precipitation from a 25-year, 24-hour rainfall event, and weekly when the available (unoccupied) storage capacity remaining in the basin is more than 90 percent of that required to maintain the minimum capacity

necessary to contain the runoff and direct precipitation from a 25-year, 24-hour rainfall event.

35. The EPA inspection referenced in Paragraph 16 above, revealed that Respondent failed to record the liquid levels in its basins at the required frequency. Specifically, Respondent failed to keep daily records for the northwest effluent basin, denominated Holding Pond 1 on the Facility's engineering plans, when the storage capacity was less than 90 percent of that required to maintain the minimum capacity necessary to contain the runoff and direct precipitation from a 25-year, 24-hour rainfall event. Additionally, Respondent did not record liquid levels at all for the southeast effluent basin, denominated Holding Pond 2 on the Facility's engineering plans, from the date it was constructed through December 2010.
36. Respondent's failure to keep adequate records is a violation of Respondent's NPDES permit and of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and implementing regulations.

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:

37. Respondent shall immediately comply with all requirements of its NPDES permit and the CWA, including terms related to the construction and operation of livestock waste controls. Respondent shall maintain and submit records to IDNR as required by its NPDES permit.
38. Respondent shall immediately cease operations within areas of the Facility where feedlot runoff cannot be managed to prevent unauthorized discharges to waters of the United States.
39. Respondent shall ensure that the capacity of its wastewater retention basins is adequate to collect and store runoff as specified in its permit. On an ongoing basis, Respondent shall remove wastewater from the retention basins in a timely manner so that the Facility remains in continuous compliance with the permit requirements.
40. Within 30 days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions that Respondent has taken to comply with the CWA and the terms of this Order.

41. On a quarterly basis for the periods of April-June, July-September, October-December, and January-March, Respondent shall submit to EPA copies of all retention basin level, precipitation, and land application records that Respondent is required to keep pursuant to its NPDES permit. Records must be submitted on or before the seventh day of the month following the end of the period (July 7, October 7, January 7, and April 7). The first report shall be submitted to EPA by July 7, 2011. The final report for this Order shall be submitted to EPA by April 7, 2012.
42. If Respondent intends to construct runoff control structures to allow for the confinement of cattle in areas which currently lack runoff controls, then beginning 30 days after the effective date of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports to EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were or will be addressed.
43. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within 30 days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

Effect of Order

44. 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 preclude EPA from seeking additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
45. 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.
46. 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.
47. 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.

48. 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.
49. 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 66101-2907.
50. 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.
51. 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).
52. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

5-10-11
Date

Karen A. Flourney
Karen A. Flourney
Acting Director
Water, Wetlands and Pesticides Division

Erin Weekley
Erin Weekley
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order for 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 and small business assistance information, to the following:


Mr. Frank W. Pechacek, Jr.
Registered Agent, Crossroads Cattle Co.
421 W. Broadway, Suite 200
PO Box 2029
Council Bluffs, Iowa 51503-9046

and

Mr. John Reisz
President, Crossroads Cattle Co.
1542 Quay Avenue
Woodbine, Iowa 51579-4022.

I further certify that on the date noted below, I sent a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Iowa:

Mr. Dan Stipe
Iowa Department of Natural Resources
Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022-2259.



Date

5/10/11
