

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

Mike Bettin)	Docket No. CWA-07-2010-0073
D/B/A Mike Bettin Feedlot)	
SAC COUNTY, IOWA)	
)	
Respondent)	FINDING 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

- The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318(a) 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.
- Mike Bettin (“Respondent”), doing business as Bettin Feedlot, operates an animal feeding operation (“Facility”) that is located in Section 16 of Township 87 North, Range 37 West, in Sac County, Iowa, and has a street address of 3087 Hwy 71, Odebolt, Iowa.

Statutory and Regulatory Authority

- 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.
- 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 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. § 2.23(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 Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa with the delegated authority to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent owns or operates an animal feeding operation ("Facility") that is located in Section 16 of Township 87 North, Range 37 West, in Sac County, Iowa.
15. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
16. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.
17. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
18. On October 28, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility. EPA personnel performed a follow-up facility visit on March 16, 2010.
19. At the time of EPA inspection, the Facility was confining approximately 993 head of cattle. Inventory records, however, document that the Facility confined greater than 1,000 head nine of the twelve months prior to the inspection. The number of cattle confined and fed at the Facility was greater than 1,000 for 45 days or more during a twelve month period, therefore the Facility is a large 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).
20. IDNR issued an NPDES permit for the Facility on January 31, 1975. This permit listed a capacity of 2000 beef cattle. However the permit expired March 1, 1980. Respondent does not have an NPDES permit for the Facility and did not have an NPDES permit at any time pertinent to this Order.
21. Runoff from Respondent's Facility flows east through a grass waterway and/or row crop field approximately 500 yards before entering the Boyer River. During the March 16, 2010 follow-up visit, EPA personnel observed and sampled storm water runoff that emanated from the feedlot and discharged into the Boyer River.
22. The Boyer River and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the Boyer River.

24. Based on the size of the Facility, the distance from the Facility to the Boyer River, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility will continue to flow into the Boyer River as a result of significant precipitation events.
25. At times pertinent to this Order, Respondent had a duty to obtain an NPDES permit for the Facility and prevent the discharge of pollutants to the Boyer River. Specifically, Respondent confined greater than 1,000 head of cattle at the Facility in November and December 2008 and in January, February, March, July, August, September, and October 2009 without an NPDES permit and without adequate runoff controls.
26. At times, including but not limited to the periods mentioned in Paragraph 25 above, the flow of wastewater from Respondent's Facility to the Boyer River constituted unauthorized discharges of pollutants from a point source to waters of the United States. These were violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

Order for Compliance

Based on the Findings of Violation set forth above, and pursuant to Section 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:

27. Respondent shall immediately comply with the CWA.
28. If manure, litter or process wastewater cannot be managed at the Facility (including, but not limited to, cattle pens, compost areas, and feed storage areas) in a manner that prevents discharges to waters of the United States, then Respondent shall reduce the number of cattle confined at the Facility below regulatory thresholds within thirty (30) days of the effective date of this Order. Respondent shall reduce and/or maintain the number of cattle confined at the Facility below regulatory thresholds at the Facility unless the Facility can be operated in a manner that maintains compliance with the CWA.
29. If Respondent cannot immediately cease all discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter and process wastewater from areas that cannot be controlled in a manner to prevent discharges.

30. Within 30 days of receipt 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.
31. Unless Respondent permanently reduces the number of cattle confined at the Facility below regulatory thresholds, Respondent shall obtain an NPDES Permit for the Facility.
32. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein.
33. If Respondent intends to construct runoff control structures to allow the confinement of cattle above regulatory thresholds then beginning within thirty (30) days of receipt 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/will be addressed.
34. Upon completion of runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
35. On a quarterly basis for one year, Respondent shall submit to EPA copies of all inventory records that document the number of cattle confined at the Facility as well as the pen ID/numbers in which they are held. The first quarterly report shall be submitted for the period March- May 2010 on June 7, 2010, and subsequent reports shall be submitted on September 7, 2010, December 7, 2010, and March 7, 2011.

Effect of Order

36. 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.
37. 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.

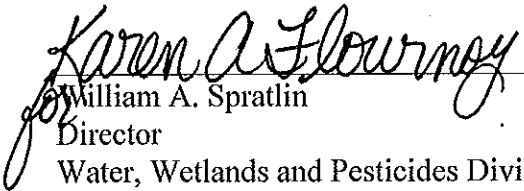
38. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
39. EPA may subsequently amend this Order in accordance with the 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.
40. 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.
41. All submissions to EPA required by this Order shall be sent to:

Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.
42. 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.
43. Notice is hereby given that violation of, or failure to comply with, any of the provisions

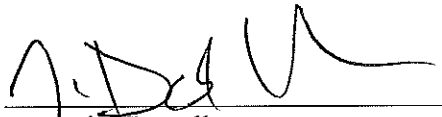
of the foregoing Order may subject Respondent to (1) civil penalties of up to \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

44. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 3-26-10


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

Date 3-25-2010


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 and small business assistance information, to the following address:

Mr. Mike Bettin
3087 Hwy 71
Odebolt, Iowa 51458.

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 Iowa:

Kenneth Hessenius
Field Office Supervisor
Field Office #3
Iowa Department of Natural Resources
1900 North Grand Avenue
Spencer, Iowa 51301.

Kimberly [Signature]

3/30/10
Date