

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

)  
) **Docket No. CWA-07-2009-0078**  
)  
)  
**Nebraska ILS Feeders, Inc.** )  
**d/b/a Lewis Feedlot** )  
**BUFFALO COUNTY, Nebraska** )  
)  
**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)** )  
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**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 Nebraska ILS Feeders, Inc. d/b/a Lewis Feedlot (“Respondent”), which owns and operates an animal feeding operation near Kearney, Nebraska. The feeding operation (“Facility”) is located in the SE ¼ of Section 12 and the N ½, NE ¼ of Section 13, in Township 9 North, Range 15 West in Buffalo County, Nebraska.

**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 Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the State of Nebraska authorized to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and NDEQ. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

**Factual Background**

14. Respondent owns and operates an animal feeding operation that is located in the SE ¼ of Section 12 and the N ½, NE ¼ of Section 13, in Township 9 North, Range 15 West in Buffalo County, Nebraska.
15. On March 18, 2009, 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 12 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. During the EPA inspection referenced in Paragraph 15, the Facility was confining approximately 7,892 head of cattle and 2,391 head of bull buffalo. 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 General NPDES permit (NEG011000), which was issued by NDEQ on April 9, 2009, and expires March 31, 2013.
21. The Wood River flows thru the facility splitting it into north and south halves and is a water of the United States, as defined under 40 C.F.R. Part 122.2. The Wood River was flowing at the time of the inspection.

**Findings of Violation**

22. Section 301 of the CWA prohibits discharges of pollutants from a point source to waters of the United States.
23. During the EPA inspection referenced in Paragraph 15, inspectors observed that the facility's south receiving and shipping pen and the facility's working horse pens did not have process waste water controls.
24. Based on the size of the Facility, the distance from the Facility to the Wood River, and the slope and condition of the land across that distance, wastewater containing pollutants from the south receiving and shipping pen and the facility's working horse pens will

continue to flow into the Wood River during precipitation events less than a 25 year, 24 hour storm event.

25. The flow of wastewater from Respondent's facility to the Wood River constitutes unauthorized discharges of pollutants from a point source to waters of the United States and, as such, is a violation of Section 301 of the CWA.

### **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:

26. Respondent shall immediately comply with its NPDES permit and the CWA, including terms related to the construction and operation of livestock waste controls, as well as recordkeeping requirements.
27. Respondent shall immediately implement controls to prevent discharges to the Wood River from the south receiving and shipping pen and the working horse pens.
28. If livestock cannot be confined at the Facility in a manner that prevents discharges to waters of the United States, then Respondent shall reduce the number of livestock confined at the Facility below regulatory thresholds within 30 calendar days of Respondent's receipt of this Order. Respondent shall not repopulate livestock above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents discharges to waters of the United States and 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 manure from areas that cannot be controlled in a manner to prevent discharges.
30. Within thirty (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.
31. If Respondent intends to construct runoff control structures for the shipping and receiving pen and working horse pens identified in Paragraph 23, then Respondent shall contact NDEQ to obtain a construction permit. Respondent shall submit written monthly progress reports to EPA beginning thirty (30) days after the effective date of this Order and continuing monthly on the seventh day of each month until Respondent submits a

Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA. The monthly reports shall include: (1) the construction and related activities that occurred at the facility during the reporting period; (2) construction and related activities anticipated during the upcoming reporting period, and; (3) a description of any construction-related problems encountered or anticipated and how these problems were/will be addressed.

32. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
33. Respondent shall ensure that the pens described in paragraph 23 be kept free from standing liquids. On an ongoing basis, Respondent shall remove standing water from the debris basin in a timely manner so that the Facility remains in continuous compliance with storage structure requirements. Respondent shall comply with all applicable requirements regarding the proper land application and transfer of manure and process waste water.

#### **Effect of Order**

34. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.
35. 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.
36. 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.
37. 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.

38. 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.

39. 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 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

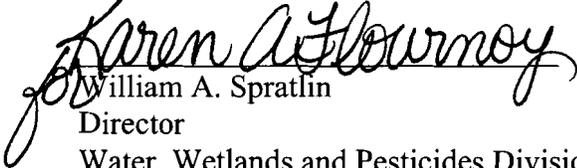
40. Pursuant to 40 C.F.R. § 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. 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.

41. 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 \$32,500 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).

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

In the matter of Nebraska ILS Feeders, Inc.  
d/b/a Lewis Feedlot  
Docket No. CWA 07-2009-0078

Date 6-25-09

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
Chris Muehlberger  
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:

Brett Carr  
Facility Manager  
Nebraska ILS Feeders, Inc. d/b/a Lewis Feedlot  
8720 Keystone Road  
Kearney, Nebraska 68848

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:

Pat Rice  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
P.O. Box 98922  
Lincoln, Nebraska 68509

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Date