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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

IN THE MATTER OF:

)
)
) Docket No. CWA-07-2010-0160
)
)

MARK BEITELSPACHER
d/b/a BEITELSPACHER FARMS
LE MARS, IOWA

)
)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)

Respondent,

Proceedings under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Consent Agreement and Final Order

The United States Environmental Protection Agency, Region 7 (EPA) and Mark Beitelspacher (Respondent), doing business as Beitelspacher Farms, have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. Thus, this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged violations of the National Pollutant Discharge Elimination System (NPDES) permit for Respondent's feedlot in Le Mars, Iowa.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

3. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged from a point source only in accordance with the terms of an NPDES permit issued pursuant to that section.

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Iowa Department of Natural Resources (IDNR) is the agency within the state of Iowa authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

6. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to commence an action for administrative penalties against any person who violates Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations

7. Respondent owns and operates an animal feeding operation (“Facility”) that is located in the Southwest ¼ of the Southwest ¼ of Section 15, Township 93 North, Range 46 West, in Plymouth County, Iowa. The Facility is comprised of 14 outdoor cattle pens with a capacity of 3,000 head and three confinement barns that have a capacity to confine approximately 4,700 head of swine.

8. Respondent is a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

9. On April 28, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility.

10. At the time of the inspection, and at all times pertinent to this Consent Agreement and Final Order, the Facility was a “concentrated animal feeding operation” and a “point source” as defined by the CWA and implementing regulations.

11. At all times relevant to this Consent Agreement and Final Order, Respondent operated under the requirements and benefits of an NPDES permit (IA0080446) which was issued

on November 28, 2006, and expires on November 27, 2011.

Alleged Violations

12. The allegations set forth in paragraphs 1 through 11 are incorporated herein.
13. Section III.A(6) of Respondent's NPDES permit requires Respondent to maintain on site for a period of five years from the date they are created a complete copy of records from the land application areas according to 40 C.F.R. Part 412.37(c) and 567 IAC 65.112(10)(b).
14. During the EPA inspection referenced in Paragraph 9 and subsequent discussions inspectors noted, and Respondent acknowledged, that Respondent does not maintain adequate records associated with liquid effluent land application activities.
15. Respondent's failure to maintain records for land application of effluent is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

CONSENT AGREEMENT

16. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
17. Respondent neither admits nor denies the factual allegations and alleged violations contained in this Consent Agreement and Final Order.
18. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.
19. Respondent and Complainant each agree to bear their own costs and, if applicable, any attorney's fees.
20. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
21. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Five Thousand Eight Hundred and Fifty Dollars (\$5,850).
22. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payments shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of

the case. The check must be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letters and the checks shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

23. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

24. The penalty payment made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

25. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

26. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342. The effect of the settlement described in paragraph 25 above is conditioned upon the accuracy of this certification.

27. This Consent Agreement and Final Order shall not relieve Respondent of his

obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

28. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

30. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The Effective Date shall be the date it is signed by the Regional Judicial Officer.

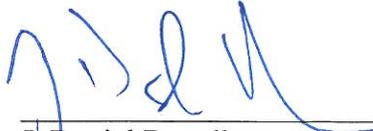
For the Respondent:

10/18/10
Date


Mr. Mark Beitelspacher

For the United States Environmental Protection Agency - Region 7

12/20/10
Date



J. Daniel Breedlove
Assistant Regional Counsel

12/20/10
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



ROBERT L. PATRICK
Regional Judicial Officer

Date: Dec. 28, 2010

IN THE MATTER OF Mark Beitelspacher d/b/a Beitelspacher Farms, Respondent
Docket No. CWA-07-2010-0160

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mark Beitelspacher
Mark Beitelspacher Farms
28279 130th Street
Le Mars, Iowa 51031

Copy by First Class Mail to:

Ken Hessenius
Iowa Department of Natural Resources
Gateway North, Suite E17
Spencer, Iowa 51301

Dated: 12/28/10


Kathy Robinson
Hearing Clerk, Region 7