

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

MORAN BEEF, INC.)
UNDERWOOD, IOWA) Docket No. CWA-07-2010-0046
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)
)
Respondent) FINDING OF VIOLATION
) ORDER FOR COMPLIANCE
)
)
)
Proceedings under)
309(a)(3) of the Clean Water Act,)
33 U.S.C. § 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 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, Moran Beef, Inc. (“Respondent”), owns and/or operates an animal feeding operation located in the Southeast ¼ of Section 17 in Township 76N, Range 42W, Pottawattamie County, 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. 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 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. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 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(6) 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(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. “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)(4).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as, or more than, “700 mature dairy cows, whether milked or dry.”
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 authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an open cattle feedlot (hereinafter, the "Facility") that is located in the Southeast ¼ of Section 17 in Township 76N, Range 42W, Pottawattamie 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), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
18. Mosquito Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.
19. On June 4, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility.
20. At the time of the June 4, 2009, EPA inspection, the Facility was confining approximately 1,485 head of beef cattle. The number of beef cattle confined 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).
21. On October 30, 2009, EPA personnel conducted a compliance sampling inspection of the Facility.

Findings of Violation

Count 1

22. Section 301 of the CWA prohibits discharges of pollutants from a point source to waters of the United States.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to Mosquito Creek and its tributaries. Samples taken by the inspectors during the October 2009 inspection, as referenced in Paragraph 21, demonstrated that pollutants from the Facility, including ammonia and nitrate, were discharging to the unnamed tributary of Mosquito Creek.

24. Based on the size of the Facility, the distance from the Facility to Mosquito Creek and its tributaries, and the slope and condition of the land across that distance, wastewater containing pollutants from the Facility will continue to discharge into Mosquito Creek and its tributaries during significant precipitation events.
25. The flow of wastewater from Respondent's facility into Mosquito Creek and its tributaries 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 Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

26. Immediately upon receipt of this Order, Respondent shall cease all discharges of manure, litter or process wastewater from the Facility to waters of the United States.
27. If manure, litter, or process wastewater cannot be managed at the Facility 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 sixty (60) days of receipt of this Order. Respondent shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents all discharges to waters of the United States.
28. 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.
29. Within fifteen (15) days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions taken to comply with the CWA and the terms of this Order.
30. Unless Respondent permanently reduces the number of livestock confined at the Facility below regulatory thresholds, Respondent shall apply for an NPDES permit for the Facility within thirty (30) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the construction and operation of livestock waste controls.

31. If Respondent intends to construct adequate runoff control structures to allow the confinement of cattle above regulatory thresholds, then beginning thirty (30) days after 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.
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.

Effect of Order

33. 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.
34. 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.
35. 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.
36. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.
37. 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.

38. All submissions to EPA required by this Order shall be sent to:

Stephen Pollard
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

39. 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.
40. 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).
41. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

In the Matter of Moran Beef, Inc.
Docket No. CWA-07-2010-0046

1/12/10
Date

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

1.13.10
Date

Christopher Muehlberger
Christopher 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 and small business assistance information, to the following:

Mr. Frank Moran
Moran Beef, Inc.
25794 Magnolia Road
Underwood, Iowa 51576.

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:

Dan Stipe
Field Office #4
Iowa Department of Natural Resources
140 Sunnyside Lane
Atlantic, Iowa 50027.



Christopher Muehlberger

1.13.10

Date