

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY REGION 7
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BEFORE THE ADMINISTRATOR

H and M Farms, LLC) Docket No. CWA 07-2014-0010
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)
Green Ridge, Missouri)
)
Respondent) FINDINGS OF VIOLATION
) ORDER FOR COMPLIANCE
)
)
Proceedings under)
Sections 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”) 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, H and M Farms, LLC, (“Respondent”), owns and/or operates an animal feeding operation located in the East ½ of the Southeast ¼ of Section 18 in Township 45 North, Range 22 West, in Pettis County, Missouri. The street address of the feeding operation is 16853 32nd Street Road, Green Ridge, Missouri 65332. The operation is herein referred to as the Facility or Operation.

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, to include, *inter alia*, biological materials and agricultural waste discharged to water. Pollutant includes “process wastewater,” which includes any water which comes in contact with, among other things, manure, litter or feed.
7. “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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
8. “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.
9. “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).
10. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system.”
11. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

12. "Production Area" is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
13. 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 CAFO must apply for a NPDES permit if the CAFO discharges.
14. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
15. The Missouri Department of Natural Resources ("MDNR") is the agency within the state of Missouri authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

16. Respondent owns and operates a broiler chicken operation ("Facility") that is located in the East ½ of the Southeast ¼ of Section 18 in Township 45 North, Range 22 West, in Pettis County, Missouri. The street address of the feeding operation is 16853 32nd Street, Green Ridge, Missouri 65332. The Facility consists of 16 confinement barns, one litter stacking shed, and two mortality composting buildings and operates under a Missouri No-discharge Operating permit authorizing Respondent to confine up to 384,000 birds.
17. On April 2, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. Following the inspection the inspectors issued a Notice of Potential Violation of the CWA to Respondent for discharges of process wastewater from Facility production areas to waters of the United States. During the inspection, the EPA inspectors observed, among other things, that poultry litter was stacked/stockpiled outside and without adequate runoff controls, process wastewater had discharging from mortality composting buildings, confinement-barn doors had been open during precipitation events resulting in the discharge of process wastewater from the barn. Precipitation data indicate that the

Facility received approximately 7 inches of rainfall the week or so prior to the inspection. Process wastewater from these, and other, production areas discharged to tributaries of Elk Branch and Camp Branch.

18. On October 31, 2013, EPA personnel returned to the Facility during a precipitation event to further evaluate the Facility's compliance with the CWA. Inspectors observed and sampled production area discharges at the Facility. Sampling results document that the Facility discharges poultry-related pollutants to tributaries of Elk Branch and Camp Branch.
19. Elk Branch and Camp Branch and their tributaries are waters of the United States, as defined in 40 C.F.R. §122.2.
20. The Facility confines and feeds or maintains chickens other than laying hens for a total of forty-five (45) days or more in any twelve month period.
21. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.
22. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
23. Respondent's records indicate that the number of birds typically confined at the Facility varied from 376,000 to 384,000.
24. At all times pertinent to this Order, the number of chickens confined and fed at the Facility was greater than 125,000. 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).
25. The design, construction, operation, and/or maintenance of Respondent's facility resulted in the presence of chicken litter and process wastewater in areas exposed to precipitation, which lacked adequate runoff controls, lacked impervious surfaces to allow adequate cleaning, and drainage features were present that facilitate the discharge of process wastewater into Elk Branch and Camp Branch and their tributaries.
26. Respondent had a NPDES permit for the Facility that expired February 23, 2013. Respondent did not renew the NPDES permit but instead operates under a state issued no-discharge permit.
27. The presence of poultry litter, animal carcasses and other pollutants source in areas exposed to precipitation, which lacked runoff controls to prevent the discharge of manure, litter and process waste water and the presence of drainage features that facilitate the discharge into Elk Branch and Camp Branch and their tributaries have resulted in

conditions in which Respondent discharges manure, litter and/or process wastewater to a water of the United States. Respondent does not have a NPDES permit as required by 40 C.F.R. § 122.23(d)(1). Respondent's discharges are a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 16 through 27 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:

28. Respondent shall immediately implement remedial measures to permanently address all conditions at the Facility that result in unauthorized discharges. Specifically, Respondent shall design, construct, operate, and maintain the Facility in a manner so that the Facility does not discharge manure or process wastewater to a water of the United States.
29. Within forty-five (45) days of the effective date of this Order, Respondent shall provide EPA with a written description and supporting documentation of the activities and procedures implemented to ensure that the Facility does not discharge manure or process wastewater to a water of the United States.
30. If Respondent is unable to design, construct, operate, and maintain the Facility so the Facility does not discharge manure or process waste water to a water of the United States, Respondent shall apply for a 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 design, construction, operation, and maintenance of livestock waste controls.
31. If Respondent intends to apply for a NPDES permit and construct associated runoff controls then within thirty (30) days of 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/will be addressed.
32. Upon completion of any necessary 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.

General Provisions

Opportunity to Confer

33. This Order shall become effective 30 days after its receipt by Respondent. Prior to the effective date, Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.
34. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 40.

Effect of Order

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. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
36. 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.
37. 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.
38. 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.

39. 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.

40. 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
11201 Renner Boulevard
Lenexa, Kansas 66219.

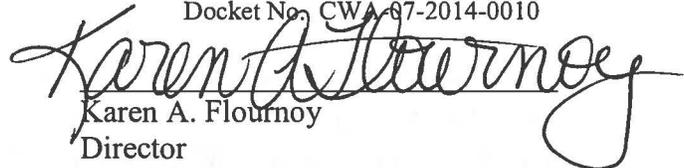
41. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation.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

42. 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).

43. The Effective Date of this Order shall be 30 days following receipt by Respondent. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

Jan. 7, 2014
Date

In the Matter of H and M Farms, LLC
Docket No. CWA-07-2014-0010


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Senior Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

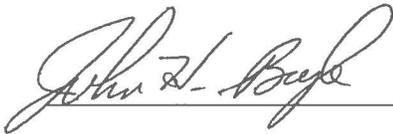
I certify that on the date noted below I filed the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 the following:

Jeffrey R. Hunt
H and M Farms, LLC
301 East Jefferson Street
Green Ridge Mo. 65360

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:

Mr. Paul Dickerson
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102.



01-08-14

Date

