

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

Platte Valley Feeders, LLC )

Respondent )

FINDING OF VIOLATION  
ORDER FOR COMPLIANCE

Docket No: CWA-07-2010-0012

Proceedings under )  
Sections 308(a) and 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 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 308(a) and Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 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.
2. Platte Valley Feeders (“Respondent”), owns and/or operates an animal feeding operation located in the N ½ of Section 15 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 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 Chapter 40 of the Code of Federal Regulations ("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)(iii) as an animal feeding operation that stables or confines more than "1,000 cattle other than mature dairy cows or veal calves.
12. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, an owner or operator of a CAFO must seek coverage under a NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur. 40 C.F.R. § 122.23(d)(1).
13. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Nebraska Department of Environmental Quality ("NDEQ") is the agency within the state of Nebraska 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**

15. Respondent owns and/or operates an animal feeding operation ("Facility") located in the N ½ of Section 15 in Township 9 North, Range 15 West, in Buffalo County, Nebraska.
16. The Facility confines and feeds or maintains livestock for a total of 45 days or more in any twelve-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).
19. Inspectors from EPA inspected the Facility on March 17 and 19, 2009, to determine its compliance with the CWA.
20. At the time of the March 17 and 19, 2009, inspection, the Facility was confining approximately 10,474 head of beef cattle. The number of beef 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)(i) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
21. Respondent was issued an NPDES General Permit on July 22, 2005. The 2005 permit was administratively extended until NDEQ issued a superseding NPDES General Permit on April 16, 2009. At all times relevant to this Order, Respondent operated under the requirements and benefits of an NPDES permit. The NPDES permit, in conjunction with the Respondent's NMP, requires all collected process wastewater to be land applied at agronomic rates.
22. The Facility's land application records indicate that during 2008 the application of collected process wastewater to field #2 was approximately 15 times greater than the agronomic rate recommended for this field. Furthermore, information provided by Respondent's consultant indicates that Respondent currently does not have adequate land application area to allow the disposal of process waste water at or below agronomic rates.
23. The application of feedlot process waste water in excess of agronomic rates is a violation of the Respondent's NPDES permit and as a result is a violation of Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

**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 their violations of the CWA:

24. Respondent shall immediately comply with their NPDES permit. This includes following the approved nutrient management plan to ensure that effluent will be applied at agronomic rates.
25. On a quarterly basis for one year, Respondent shall submit to EPA copies of all retention structure level, precipitation, and land application records, etc. (Operations Reports) that Respondent is required to keep pursuant to Respondent's NPDES permit.
26. The first quarterly report shall cover October, November, and December 2009 and shall be submitted to EPA on January 10, 2010. Subsequent reports shall be submitted on the 10<sup>th</sup> day following each quarter until January 10, 2011.
27. Within thirty (30) days of the effective date of this Order, Respondent shall inform EPA, in writing, of all actions that Respondent has taken or will take to comply with the CWA and the terms of this Order. If Respondent intends to acquire or gain access to additional land application areas, Respondent shall provide documentation to EPA within seven (7) days of when such land application arrangements are finalized.

**Effect of Order**

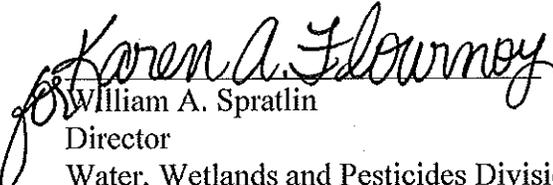
28. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.
29. Compliance with the terms of this Order shall not relieve Respondent of liability for an administrative or judicial enforcement action to recover penalties for any violations of the CWA, nor shall compliance with this Order preclude EPA from initiating such an action or seeking additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
30. Nothing in this Order shall limit EPA's right to obtain access to and/or inspect Respondent's Facility, or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

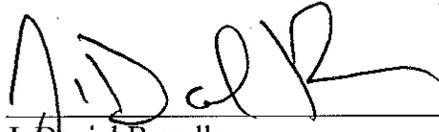
31. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.
32. 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.
33. 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 5<sup>th</sup> Street  
Kansas City, Kansas 66101.
34. 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. To make 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 permitted by the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.
35. 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).
36. The terms of this Order shall be effective and enforceable against Respondent upon Respondent's receipt of the Order.

In the Matter of Platte Valley Feeders  
Docket No. CWA-07-2010-0012

11-10-09  
Date

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

  
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:

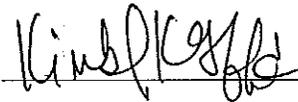
Mr. Robert Beck  
Platte Valley Feedlot  
5622 East 78<sup>th</sup> Street  
Kearney, Nebraska 68847

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 Nebraska:

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

NOV 10 2009

\_\_\_\_\_  
Date

  
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