

Certification

All submissions of information and documentation to EPA relating to information in the Administrative Order on Consent must include the following certification signed and dated by the Permittee or legal counsel representing the Permittee:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature:

Joel Hetrick

Name:

Joel Hetrick

Title:

Partner

Date:

7-22-21

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:

**Joel Hetrick
Hetrickdale Farms
69 Hetrick Road
Bernville, Pennsylvania**

Respondent

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Docket No. CWA-03-2021-0049DN

ADMINISTRATIVE ORDER ON CONSENT

PRELIMINARY STATEMENT AND JURISDICTION

1. The United States Environmental Protection Agency, Region III (EPA) has made the following findings of fact and issues this Administrative Compliance Order on Consent (Order) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Enforcement & Compliance Assurance Division, Region III.
2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, in relevant part, that: “Whenever on the basis of any information available to him the Administrator finds that any person is in violation of Sections 301, 302, 306, 307, 308, 318, or 405 of (the Act), or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this title by him or by a State ..., he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.”
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. EPA has consulted with the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP) regarding this action and EPA will mail a copy of this fully executed Order to the appropriate PADEP official.

5. Joel Hetrick, individually (Respondent), has agreed and consents to the issuance of this AOC.

GENERAL PROVISIONS

6. For the purpose of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this AOC.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Order.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this Order.
9. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this Order, including any costs related to resolution of any dispute arising regarding this Order.
10. Issuance of this Order is intended to address the violations described herein. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. § 1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction.
11. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
12. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
13. By signing this Order, Respondent acknowledges that this Order may be made available to the public without further notice to Respondent and Respondent represents that, to the best of his knowledge and belief, this Order does not contain any confidential business information or personally identifiable information from Respondent.
14. Respondent certifies that any information or representation he has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by the Respondent to the EPA regarding matters relevant to this Order are false

or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent is aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

15. Respondent may assert a business confidentiality claim covering part or all of the information which this Order requires the Respondent to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. EPA acknowledges that 40 C.F.R. Part 2, Subpart B, sets forth procedures for handling and dissemination of information subject to a claim of business confidentiality made in accordance with 40 C.F.R. Part 2, Subpart B. For any information for which Respondent does not assert a confidentiality claim, EPA may make such submitted information available to the public without further notice to Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. Section 502(5) of the Act, 33 U.S.C. § 1362, provides: “The term ‘person’ means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”
17. Respondent, Joel Hetrick, individually conducts business under the trade name of “Hetrickdale Farms” at 69 Hetrick Road, Bernville, Pennsylvania.
18. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. At all times relevant to this Order, Respondent has been and is the owner and operator of a Concentrated Animal Feeding Operation (CAFO), located at 69 Hetrick Road, Bernville, Pennsylvania (the Facility).
20. 40 C.F.R. § 122.2 defines “point source” as: “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 (CAFO), landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.”
21. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and 40 C.F.R. § 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).
22. Each conveyance from the Facility is a “point source” as that term is defined in 40 C.F.R. § 122.2.
23. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the

National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

24. 40 C.F.R. § 122.2 states, in relevant part: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point source... This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works...”
25. CAFO is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with C.F.R. § 122.23(c).
26. Pursuant to 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must seek permit coverage under and NPDES permit if the CAFO discharges.
27. At all times relevant to this Order, storm water from the Facility discharged into a tributary to Tulpehocken Creek. The tributary and Tulpehocken Creek are each a “navigable water”, as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are, thus, “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
28. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permits.
29. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized the Commonwealth of Pennsylvania to issue General NPDES Permits.
30. In accordance with Section 402(a) of the Act, 33 U.S.C. § 1342(a), PADEP issued a general NPDES permit entitled “PAG-12 NPDES General Permit for Operation of Concentrated Animal Feeding Operations” (PADEP’s General NPDES Permit), which became effective on April 1, 2018 and will expire on March 31, 2023.
31. At all times relevant to this Order, the Respondent operated a dairy CAFO consisting of approximately 1,175 mature dairy cows, 243 dairy heifers, 524 dairy calves, and approximately 270 steers at the Facility.
32. Pursuant to the applicable PADEP procedures, Respondent requested coverage under the PADEP’s General NPDES Permit for a CAFO owned and operated by Respondent and, in response to such request, PADEP approved coverage under NPDES Permit Number PAG123769 (hereinafter the “Permit”).

33. At all times relevant this Order, Respondent was subject to the requirements of the Permit.
34. Part B (Standard Conditions), Section I (Management Requirements), Subsection A (Compliance) of the Permit provides, in relevant part, that: “The permittee shall comply with all conditions of this General Permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or denial of a permit renewal application. (25 Pa. Code §§ 92a.3(c), 92a.41(a) and 40 CFR § 122.41(a))”
35. On March 10, 2020, representatives of EPA Region III, PADEP and Berks County Conservation District (the Inspection Team) conducted an inspection of Respondent’s CAFO operation at the Facility (the Inspection) to evaluate Respondent’s compliance with certain portions of the Permit.
36. The Inspection Team prepared an inspection report from the Inspection (the Inspection Report), which included multiple observations regarding Respondent’s compliance with the requirements of the Permit, including the Respondent’s Nutrient Management Plan (Respondent’s NMPP), Conservation Plan and Annual Reports.
37. By e-mail dated May 8, 2020, EPA sent a copy of the Inspection Report to the Respondent.
38. Based on information obtained during, and subsequent to, the Inspection, EPA has determined that Respondent failed to comply with the Permit and identified the following violations of the Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

Count I
Failure to Maintain Documentation of Water Line Inspections

39. The allegations of Paragraphs 1 through 38 of this Order are incorporated herein by reference.
40. Part III.C. of the Permit requires that the permittee “shall maintain records of all inspections on-site and make these records available to DEP upon request.
41. Part III.C.1 of the Permit requires “Where the operation maintains an animal population of at least 700 mature dairy cows (whether milked or dray) and/or 1,000 cattle other than mature dairy cows or veal calves, the permittees shall inspect water lines daily, including drinking water or cooling water lines, for the presence of leaks. The permittee shall correct any discovered leaks as soon as possible”
42. During the Inspection on March 10, 2020, Respondent did not have documentation of daily waterline inspections as required by Part III.C.1 of the Permit.

43. Respondent's failure to document and maintain the documentation of waterline inspections is a violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Count II

Failure to Maintain Written Records of Weekly Silage Leachate Inspections

44. The allegations of Paragraphs 1 through 43 of this Order are incorporated herein by reference.
45. Part III.C.2.b of the Permit states: "The permittee shall conduct a visual inspection of the production area and surrounding area at least once per week and within 24 hours following storm events. Inspections shall, at a minimum, include evaluation of: (b) Any devices channeling contaminated stormwater to manure storage facilities, stormwater diversion devices, and runoff diversion structures."
46. During the Inspection on March 10, 2020, Respondent had no documentation on site of weekly inspections of devices channeling contaminated stormwater to manure storage facilities, stormwater diversion devices, and runoff diversion structures as required by Part III.C.2.b of the Permit.
47. Respondent's failure to document weekly silage leachate inspections in accordance with Part III.C.2.b of the Permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III

Failure to Maintain Mortality Records

48. The allegations of Paragraphs 1 through 47 of this Order are incorporated herein by reference.
49. Part C.IV.B of the Permit states "The permittee shall maintain records of animal mortality management on-site and make these available to DEP upon request."
50. During the Inspection on March 10, 2020, Respondent had no documentation on site of mortality records as required by Part C.IV.B of the Permit.
51. Respondent's failure to maintain mortality records on site in accordance with Part C.IV.B of the permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count IV

Failure to Account for Mortality Composting in the NMP

52. The allegations of Paragraphs 1 through 51 of this Order are incorporated herein by reference.
53. Part C.IV.A of the Permit requires that facilities which compost carcasses on-site account for the compost in the NMP.

- 54. During the Inspection on March 10, 2020, the Inspection Team observed a composted mortality located at the House Farm area of the Facility. The composted mortality was not completely covered at the time of the Inspection and there was a dark leachate observed next to the composted mortality.
- 55. Respondent's NMP did not account for mortality composting at the time of the EPA Inspection as required by Part C.IV.A of the Permit though the practice was observed on-site at the Facility during the EPA Inspection.
- 56. Respondent's failure to account for mortality composting within the NMP in accordance with Part C.IV.A of the Permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count V
Failure to Determine Winter Manure Storage Capacity

- 57. The allegations of Paragraphs 1 through 56 of this Order are incorporated herein by reference.
- 58. Part C.I.D.2 of the Permit requires "The NMP must contain a determination of adequate manure storage capacity for the winter period, accounting for the required Freeboard...."
- 59. Respondent's 2019 and 2020 NMP did not contain a determination of adequate manure storage capacity for the winter period at the time of the EPA Inspection as required by Part C.I.D.2 of the Permit.
- 60. Respondent's failure to account for winter manure storage capacity within the NMP in accordance with Part C.I.D.2 of the Permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count VI
Failure to Have Adequate Manure Storage Facilities

- 61. The allegations of Paragraphs 1 through 60 of this Order are incorporated herein by reference.
- 62. Part C.V.A.1 of the Permit requires "The permittee shall design, construct, operate and maintain manure storage and handling facilities to collect all liquid and semi-solid manure and agricultural process wastewater from production areas unless approved by DEP"
- 63. During the Inspection on March 10, 2020, the Inspection Team observed that the Respondent's process wastewater at the Scott Farm area of the Facility did not collect all manure and process wastewater from the concrete lot as required by Part C.V.A.1 of the Permit. Some manure and wastewater went around the collection tank and into a dug-out hole next to the tank.
- 64. During the Inspection on March 10, 2020, the Inspection Team observed some silage leachate process wastewater was discharged to the ground behind the Kev Barn area at the Facility where it could flow to an unnamed tributary to Mill

Creek. This leachate is supposed to be collected via the silage leachate collection system and sent to a lagoon as required by the Permit.

65. Respondent's failure to collect all manure and process wastewater in accordance with Permit Part C.V.A.1 Permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count VII
Failure to Install Depth Markers

66. The allegations of Paragraphs 1 through 65 of this Order are incorporated herein by reference.
67. Part C.V.B.1 of the Permit requires "... a permanent depth marker or other indicator within all manure storage facilities containing liquid or semi-solid manure to provide a visual indication of the depth of manure"
68. During the Inspection on March 10, 2020, a depth marker was not observed at the Dry Cow Lagoon or the Stage 2 Lagoon located at the Facility as required by Part C.V.B.1 of the Permit.
69. Respondent's failure to install depth markers in the Dry Cow and Stage 2 Lagoons in accordance with Permit Part C.V.B.1 Permit is a violation of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

ORDER FOR COMPLIANCE

70. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby, **ORDERED** to complete the compliance tasks and reporting requirements set forth below.

COMPLIANCE TASKS REQUIREMENTS

71. Within Seventy-Five (75) days of the effective date of this AOC, Respondent will provide to EPA the following information:
- a. Animal Mortality Records documenting the date of the mortality, animal type, number of deceased animals and the mortality management practice conducted for the 3rd Quarter of 2021 (consisting of the months of July, August and September). Each entry shall include the initials of the person annotating the information and the date of such entry.
 - b. Daily Water Line Inspection log for the 3rd Quarter of 2021 documenting the date of the daily inspection, if leaks were detected (yes or no) during the inspection and if leaks were detected the corrective action Respondent took to address the leak. Each entry shall include the initials of the person annotating the information and the date of such entry.
 - c. Silage Leachate Collection System Inspection log, documenting date of inspection, if issues identified (yes or no) and if an issue was identified the corrective action that was taken to remedy the issue for the 3rd Quarter of

2021. Each entry shall include the initials of the person annotating the information and the date of such entry.

72. Respondent shall submit to EPA the information requested in Paragraph 72. a.-c., above, for the 4th Quarter of 2021 by no later than January 15, 2022; for 1st Quarter of 2022 by no later than April 15, 2022, and for the 2nd Quarter of 2022 by no later than July 15, 2022.
73. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by Respondent that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I also certify under penalty of law that Hetrickdale Farms is currently compliant with the Pennsylvania National Pollutant Discharge Elimination System (PA NPDES) Permit No. PAG123769.

Signed _____

Title _____

74. Unless otherwise directed in writing, Respondent shall submit any submission or written communication relating to this Order by email to:

Email: gold.peter@epa.gov

Any information submitted electronically shall be submitted in a widely recognized electronic format.

TERMINATION

75. This Order shall terminate upon EPA's determination of the completeness of the submissions by Respondent of documentation and certification in accordance with the requirements as described in Paragraphs 71 through 73, above.

OTHER APPLICABLE LAWS

76. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued by EPA or the Commonwealth of Pennsylvania.

77. Compliance with the terms and conditions of this Order does not relieve Respondent of his obligations to comply with any applicable federal, state, or local law or regulation. Nothing in this Order shall relieve Respondent of his obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit.
78. This Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

EFFECTIVE DATE

79. This ORDER is effective on the day that a copy of this Order executed by EPA is received by Respondent.

ENTIRE AGREEMENT

80. This Order constitutes the entire agreement and understanding between the Parties regarding the findings of fact and law and all requirements set forth in this Order and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties, relating directly to this Order, other than those expressed in this Order.

In re: Joel Hetrick
Docket No. CWA-03-2021-0049DN

AGREED TO BY RESPONDENT:

Joel Hetrick

Date: 7-22-21


Name: Joel Hetrick

SO ORDERED:

Date: _____

Karen Melvin
Director, Enforcement and Compliance Assurance
Division
U.S. EPA Region III