

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

Eugene Enowski)
Olean, Miller County, Missouri) Docket No. CWA-07-2012-0011

Respondent) FINDING OF VIOLATION
ORDER FOR COMPLIANCE

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” or “Act”), 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. The Respondent, Mr. Eugene Enowski, (“Respondent”), owns and/or operates an animal feeding operation located in Section 2, Township 42 North, Range 15 West, in Miller County, Missouri.

Statutory and Regulatory Authority

3. Section 308(a)(B) grants EPA inspectors the right of entry to, upon, or through any premises in which an effluent source is located. 33 U.S.C. §1318(a)(B). This right of access includes the right to have access to and copy any records, inspect any monitoring equipment, and sample any effluents. See 33 U.S.C. §1318(a)(B)(ii).
4. “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.
5. 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

6. Respondent owns and/or operates an animal feeding operation that is located in Section 2, Township 42 North, Range 15 West, in Miller County, Missouri (“Facility”).
7. On January 9, 2012, EPA personnel contacted the Respondent at the Facility, presented EPA credentials, and informed the Respondent of their intent to inspect the Facility on January 10, 2012. Respondent informed EPA personnel that he was denying access to inspect the Facility.
8. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1) that generates agricultural waste which is a pollutant as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and, as a result, is an effluent source as contemplated by Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
9. Respondent’s denial of EPA’s right of access to inspect the effluent source is a violation of 308 of the Clean Water Act, 33 U.S.C. § 1318.

Order for Compliance

Based on the Findings of Violation set forth in paragraphs 6 through 9 above, and pursuant to Sections 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 violation of the CWA:

10. Upon presentation of EPA inspector credentials, Respondent shall grant the right of entry to, upon, or through his animal feeding operation, an effluent source, for inspection by EPA personnel. Such access shall include, but not limited to, at reasonable times, access to facility records and locations to sample effluent generated at and emanating from Respondents animal feeding operation.

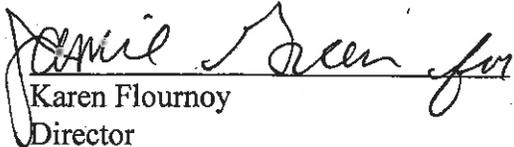
Effect of Order

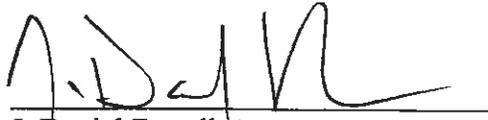
11. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.
12. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.
13. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondents' Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
14. 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.
15. 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 Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
16. 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.

17. 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).
18. The terms of this Order shall be effective and enforceable against Respondent upon his receipt of the Order.

1/10/2012
Date


Karen Flournoy
Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

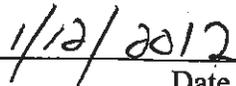
I certify that on January 10, 2012, I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Records Clerk, Region 7.

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 Missouri:

Mr. Kevin Mohammadi
Missouri Department of Natural Resources
Water Pollution Compliance/Enforcement
PO Box 176
Jefferson City, Missouri 65102



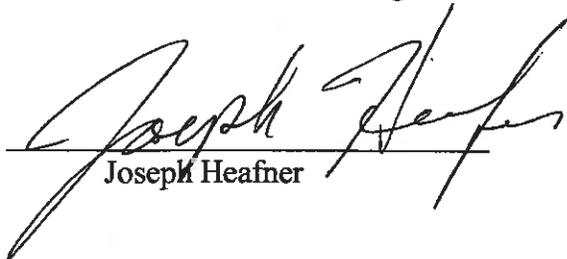
J. Daniel Breedlove



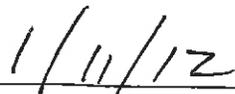
Date

I certify that on the date noted below I hand delivered one true and correct copy of the signed original Findings of Violation and Order of Compliance to the following:

Mr. Eugene Enowski



Joseph Heafner



Date