

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 504(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, the EPA promulgated regulations codified at 40 C.F.R. § 122. Under 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 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 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, 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)(3).
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. “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 Kansas Department of Health and Environment (“KDHE”) is the agency within the State of Kansas with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent owns and operates an animal feeding operation (“Facility”) that is located in the East ½ of Section 8, West ½ of Section 9, Northwest ¼ of Section 16 and the Northeast ¼ of Section 17, Township 27 South, Range 13 West, in Pratt County, Kansas.
15. On May 25, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility.
16. The Facility confines and feeds or maintains cattle for a total of forty-five (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), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
19. The Facility confines greater than 1,000 head of cattle for at least 45 days over a 12 month period, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4).
20. KDHE issued an NPDES permit to the Facility on December 12, 2003. The facility is permitted for a maximum of 40,000 head of beef cattle. The NPDES permit expires on December 11, 2008.
21. The EPA issued an Administrative Compliance Order on December 21, 1999, requiring Pratt Feeders to maintain adequate runoff storage capacity, record freeboard levels as required by the NPDES permit, and only land apply feedlot wastes on days deemed appropriate by the NPDES permit.
22. The NPDES permit requires that retention structures be maintained with an adequate storage capacity to ensure structural stability, and provide storage capacity for a two-week period plus precipitation induced flow from a 25-year, 24-hour storm event. Furthermore, on December 1st of each year the retention structures shall have the required storage

capacity available as specified in the permit to provide additional storage for accumulations through the winter.

23. During each month between January 2004 and April 2005, the Respondent did not maintain an adequate storage capacity for one or more retention structures, as required by the permit. Furthermore, retention structures number 3, number 4, and number 6 did not meet the required storage capacities on December 1, 2004, as required by the permit.
24. Respondent's NPDES permit requires that operational logs shall be maintained. Information recorded shall include but not be limited to the soil condition (frozen/thawed, etc.) for each day waste is applied.
25. Operational logs from January 2004 through April 2005 do not specify the soil conditions for each day of land application.
26. Should operations at the facility result in discharge(s) to waters of the U.S., the Facility would discharge on the west to an unnamed stream located approximately 0.2 mile from pond 6. The stream travels for approximately 4 miles before entering the South Fork of the Ninescah River. Discharges from the east side of the facility would enter Natrona Creek, located approximately 0.4 mile from pond 1 and travel for approximately 9 miles to enter the South Fork of the Ninescah River. This segment of the South Fork of the Ninescah River (4) is classified by KDHE as a general-purpose water and designated for use as a domestic water supply, food procurement, ground water recharge, industrial water, irrigation, and livestock watering. This segment of the South Fork of the Ninescah is also designated for use of primary contact recreation, however is not open to and accessible to the public under Kansas Law. This segment is listed as impaired on the Kansas 2004 303(d) List for chloride, and temperature, not contaminants generally associated with discharges from open cattle CAFOs.

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 its violations of the CWA:

27. Respondent shall ensure that waste water levels in storage structures are in compliance with the storage structure operating levels of Respondent's NPDES permit. On an ongoing basis, Respondent shall remove waste water from the storage structures in a timely manner so that the Facility remains in continuous compliance with storage structure operating level requirements. Respondent shall comply with all applicable requirements regarding the proper land application of waste water.

28. Respondent shall ensure that it meets or exceeds the inspection and record keeping requirements of its NPDES permit.
29. On a quarterly basis for one year, Respondent shall submit to EPA copies of all lagoon level, precipitation, and land application monthly records that Respondent is required to keep pursuant to Respondent's NPDES permit. The first quarterly report shall be submitted to EPA on April 7, 2006, and subsequent reports shall be submitted on July 7, 2006, October 7, 2006 and January 7, 2007.

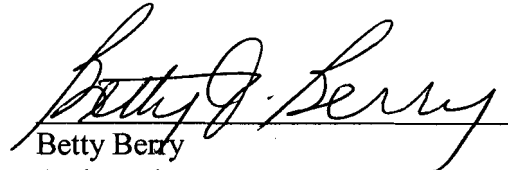
Effect of Order

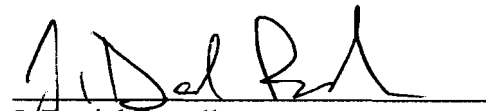
30. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
31. 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.
32. Nothing in this Order shall limit the 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.
33. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance 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.
34. 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.
35. All submissions to the EPA required by this Order shall be sent to:

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

36. 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 the EPA to release the submitted information to the public without further notice. The 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 Clean Water Act appear in 40 C.F.R. § 2.302.
37. 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 \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
38. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 02/10/06


Betty Berry
Acting Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

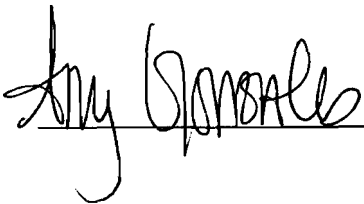
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

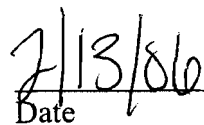
I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter and small business assistance information, to the following registered agent for Pratt Feeders, L.L.C.:

Jerald L. Bohn
Registered Agent for Pratt Feeders, L.L.C.
40010 NW 20th Ave.
Pratt, Kansas 67124-0000

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 Kansas:

John Harsch, Chief
Livestock Waste Management Program
Kansas Department of Health and Environment
1000 S.W. Jackson
Topeka, Kansas 66612




Date _____