

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 N. 5<sup>th</sup> Street  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

James Quirk,	)	
Brian Quirk, and	)	Docket No. CWA-07-2005-0242
Todd Quirk	)	
d.b.a. Quirk Farms	)	
SAC COUNTY, IOWA	)	
	)	
Respondents	)	FINDING OF VIOLATION
	)	ORDER FOR COMPLIANCE
	)	
	)	
Proceedings under	)	
Section 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 VII, and redelegated to the Director of Region VII’s Water, Wetlands and Pesticides Division.
2. The Respondents are James Quirk, Brian Quirk, and Todd Quirk (“Respondents”), who own and/or operate an animal feeding operation located in Sections 28 and 34 of Township 87 North, Range 37 West, in Sac County, Iowa. The animal feeding operation is an open cattle feedlot known as Quirk Farms, located five miles west of Lake View, Iowa.

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 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 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 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 Iowa Department of Natural Resources (“IDNR”) is the agency within the State of Iowa with the delegated authority to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for

violations of the CWA.

**Factual Background and Findings of Violation**

14. Respondents own and/or operate an animal feeding operation ("Facility") that consists of two contiguous feeding areas located in Sections 28 and 34 of Township 87 North, Range 34 West, in Sac County, Iowa.
15. The Facility is a concentrated animal feeding operation as defined by 40 C.F.R. §122.23(b)(3), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
16. On April 6, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility.
17. Respondents do not have an NPDES permit for the Facility.
18. At the time of the EPA inspection, the facility was confining approximately 1,800 head of cattle. The number of 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).
19. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
20. At the time of the EPA inspection neither crops, vegetation, forage growth, nor post harvest residues were sustained over any portion of the Facility's feeding areas.
21. The Facility has two separate but contiguous feeding areas. Runoff from the feeding area located in Section 28 flows into a sedimentation basin. The Facility then releases runoff from the sedimentation basin through a drain pipe into a county road ditch and culvert that flows east under Highway 71 and into an unnamed tributary of Boyer Creek. Runoff from the feeding area located in Section 34 flows east across Respondents' cropland through an eroded channel that discharges directly into Boyer Creek, approximately one mile east of the feeding area.
22. Boyer Creek is a water of the United States, as defined by 40 C.F.R. Part 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to these unnamed tributaries.
24. Based on the size of the Facility, the distance from the Facility to waters of the United

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.

31. Upon receipt of this Order and continuing until such time as Respondents are issued an NPDES Permit for the Facility, Respondents shall maintain the following operational records: 1) storage facility liquid levels after every event with the potential to change the amount of liquid in the storage facility; 2) land application records, including dates, location, amounts applied, and application rates; and 3) precipitation records. Respondents shall submit copies of these records to the EPA on a quarterly basis for the periods of January-March, April-June, July-September and October-December. Records must be submitted on or before the 7<sup>th</sup> day of the month following the end of the period (October 7, January 7, April 7 and July 7). Upon issuance of an NPDES permit, Respondents shall maintain and submit records as required by the NPDES permit.

#### **Effect of Order**

32. Compliance with the terms of this Order shall not relieve Respondents 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.
33. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state and/or federal permits.
34. 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 Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
35. 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.
36. If any provision or authority of this Order or the application of this Order to Respondents 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.

37. All submissions to the EPA required by this Order shall be sent to:

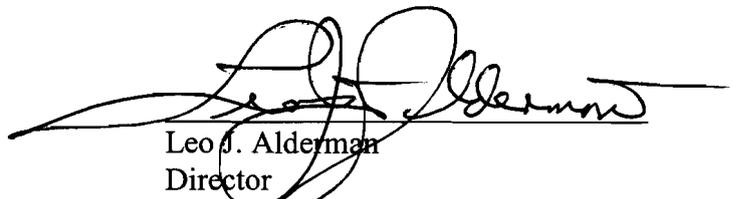
Stephen Pollard  
CAFO Enforcement Program  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

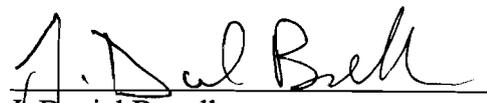
38. Pursuant to 40 C.F.R. 2.201-2.311, Respondents may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation.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

39. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondents 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).

40. The terms of this Order shall be effective and enforceable against Respondents upon their receipt of the Order.

Date 6/30/05

  
Leo J. Alderman  
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 VII.

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.

Brian J. Quirk  
James Quirk  
Todd Quirk  
Quirk Farms  
2236 320<sup>th</sup>  
Wall Lake, Iowa 51466

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:

Barbara Lynch  
Bureau Chief  
Compliance & Enforcement Bureau  
Iowa Department of Natural Resources  
Wallace State Office Building  
900 East Grand  
Des Moines, Iowa 50319

  
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6/28/05  
\_\_\_\_\_  
Date