

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

**901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

A.J. Jones)
D/B/A Callicrate Feeding Company)
St. Francis, Kansas)

Docket No. CWA-07-2011-0082

Respondent)

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 7, and redelegated to the Director of Region 7's Water, Wetlands and Pesticides Division.
2. The Respondent is A.J. Jones who owns and/or operates Callicrate Feeding Company, an animal feeding operation permitted to confine 12,000 cattle near St. Francis, Kansas. The animal feeding operation ("Facility") is located in the Southeast ¼ of Section 19 and the Southwest ¼ of Section 20, in Township 4 South, Range 40 West, in Cheyenne County, Kansas.

STATUTORY AND REGULATORY AUTHORITY

3. Respondent is a "person" as that term is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(12).
4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, among other things, Section 402 of the CWA, 33 U.S.C. § 1342.
5. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue National Pollutant Discharge Elimination System (NPDES) permits that, among other things, prescribe conditions whereby a discharge may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.
6. 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."
7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d), an NPDES permit is required for any CAFO that discharges.
8. "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.
9. "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.”

10. “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.
11. “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).
12. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
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 Kansas Department of Health and Environment (“KDHE”) is the agency within the State of Kansas with the 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 the EPA and the KDHE. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

FACTUAL BACKGROUND

15. Respondent owns and/or operates an animal feeding operation (Facility) that is located in the Southeast ¼ of Section 19 and the Southwest ¼ of Section 20, in Township 4 South, Range 40 West, in Cheyenne County, Kansas. The Facility is comprised of, among other things, outdoor cattle pens with a maximum permitted capacity of approximately 12,000 head.
16. On February 1, 2011, EPA personnel conducted a compliance evaluation inspection of the Facility.
17. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.

18. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility that confines animals while cattle are present.
19. 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(f)(14) of the CWA, 33 U.S.C. § 1362(f)(14).
20. Respondent is currently operating under a NPDES permit (KS0087041) which was issued on April 19, 2007, and will expire on April 18, 2012.
21. At the time of the EPA inspection, the Facility was confining approximately 3,219 head of cattle. At all times relevant to this Order, 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).
22. Respondent's feed stock storage and compost areas are exposed to precipitation in areas that lacked adequate runoff controls.

FINDINGS OF VIOLATION

Count 1: Failure to maintain adequate records

23. Among other things, Respondent's NPDES permit requires Respondent to maintain written operations reports. Records required to be in the report include: (1) for each day waste is applied; soil conditions, quantity of waste applied, application area, and vegetative crop on the application area; and (2) available storage depth in all retention structures on a weekly basis and daily readings if the minimum storage capacity is not available in the retention structures.
24. The EPA inspection referenced in paragraph 16 above, revealed that Respondent failed to accurately record the liquid levels in the Facility's retention structures. Specifically, Respondent stated that the 2010 monthly Operations Reports were not recorded and the entries from the 2009 monthly Operation Reports were repeated on the 2010 monthly Operation Reports. Record review identified that Respondent failed to accurately document land application activities in March 2010 and May 2010 in the 2010 Operation Reports. Moreover, according to Respondent's operational records from January 2010 to January 2011, daily operating levels were not documented on days when freeboard levels were exceeded.
25. Respondent's failure to maintain accurate and adequate records is a violation of Respondent's NPDES permit and of Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations.

Count 2: Failure to maintain adequate storage capacity

26. Respondent's NPDES permit requires that water pollution control facilities be operated and maintained to prevent the discharge of livestock waste into waters of the United States. Specifically, the permit requires all waste retention structures be regularly maintained with adequate freeboard 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.
27. On September 23, 2010, KDHE personnel conducted an inspection of the Facility. The inspection revealed that the Facility failed to maintain adequate storage levels in the wastewater retention structures as required by the Respondent's NPDES permit.
28. During the EPA inspection referenced in paragraph 16, the inspector observed that the operating levels for Retention Structure #2 were over levels required by Respondent's NPDES permit. Respondent stated during the inspection that winter pump down levels were not achieved in 2010.
29. According to Respondent's operational records, during the months of August 2010 and January 2011 Respondent failed to maintain the required operating level in the Retention Structure #2.
30. Respondent's failure to maintain adequate freeboard are violations of Respondent's NPDES permit, and as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

Count 3 Failure to meet Nutrient Management Plan requirements

31. Respondent's Nutrient Management Plan (NMP) requires that nutrient analysis will be performed on liquid runoff and solid manures at least annually. Moreover, the NMP requires that manure application rate will incorporate manure sampling information, soil sampling information and crop requirements and that all manure shall be applied at agronomic rates.
32. Based on information provided by the Respondent, at a minimum, Respondent failed to conduct manure solids analysis, and failed to conduct wastewater analysis for 2010. Without conducting these required analyses, Respondent was unable to calculate rates that ensured application of manure at agronomic rates.

33. Respondent's failure to adequately sample manure and process waste water generated at its Facility and calculate application rates based on these analyses to apply manure and process waste water at agronomic rates are violations of the NMP which is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

Count 4: Failures to conduct all production area operations within areas that are controlled in a manner capable of preventing pollution

34. Respondent's NPDES permit requires that all runoff and wastewater containing livestock or related wastes not collected or retained by water pollution control facilities shall be controlled in a manner capable of preventing pollution.
35. On September 23, 2010, KDHE personnel conducted an inspection of the Facility. The inspection revealed that the feed stock storage area was not controlled by waste retention structures.
36. During the EPA inspection referenced in paragraph 16, the inspector observed that the feed stock storage area and the composting operation were located in areas where process wastewater was uncontrolled by wastewater retention structures.
37. Respondent's failure to operate the feedstock storage area and composting operation within areas that are controlled in a manner capable of preventing pollution is a violation of Respondent's NPDES permit and of Section 402 of the CWA, 33 U.S.C. § 1342, and implementing regulations. Any discharge of a pollutant to a water of the United States from these areas would be a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

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:

38. Respondent shall immediately comply with all requirements of its NPDES permit and the CWA, including terms related to the construction and operation of livestock waste controls. Respondent shall maintain and submit records to KDHE as required by its NPDES permit. Among other things required by the NPDES permit, Respondent shall immediately perform the following:
- Coordinate with KDHE and ensure all areas where runoff and wastewater containing livestock or related wastes not collected or retained by water pollution control facilities is controlled in a manner capable of preventing pollution;

- Coordinate with KDHE to update the Facility's NMP to ensure that it meets the requirements of 40 C.F.R. § 122.42(e);
 - Coordinate with KDHE regarding the permitting of the mobile slaughter operation to modify the NPDES permit to cover such operations and ensure compliance with the NPDES permit and the CWA;
 - Initiate record keeping requirements for all wastewater retention structures and land application activities as required by Respondent's current NPDES permit and NMP. Respondent shall modify its recordkeeping activities to satisfy the requirements of any updated or revised NMP or NPDES permit;
 - Land application areas shall be sampled as required by Respondent's current and any revised NMP or NPDES permit;
 - Manure and process waste water shall be sampled as required by Respondent's current and any revised NMP or NPDES permit; and
 - Sample results shall be incorporated into the calculation of appropriate land application rates as required by Respondent's current and any revised NMP or NPDES permit.
39. Respondent shall ensure that wastewater levels in retention structures are in compliance with the storage structure operating levels of Respondent's NPDES permit. On an ongoing basis, Respondent shall remove wastewater from the storage structures in a timely manner so that the Facility remains in continuous compliance with retention structure operating level requirements. Respondent shall comply with all applicable requirements regarding the proper land application of wastes.
40. Within thirty (30) days of the effective date of this Order, Respondent shall inform the EPA in writing, of all actions taken to comply with its NPDES permit, the CWA, and the terms of this Order.
41. Commencing the Effective Date of this Order and continuing quarterly for two years, Respondent shall submit records compiled and retained pursuant to its current and/or revised NMP and NPDES permit. Quarterly submissions shall, at a minimum, document the following:
- Retention structure levels;
 - Precipitation amounts;
 - Animal inventory;
 - Date of land application event of manure or process waste water;
 - Total quantity of manure and/or process waste water applied and the application rate per acre;
 - Identification and location of field to which manure and/or process waste water was applied (including maps demonstrating location within each field where manure or process waste water was applied);

- Identification of whether process waste was in solid or liquid form;
- Source of process waste (i.e. retention structure, .); and
- The most recent manure or process waste analysis and most recent soil samples from each field submitted with first quarterly report. Subsequent manure analyses and soil samples will be submitted with the next quarterly report that is due.

Respondent shall submit copies of these records to the EPA on a quarterly basis (every three months) for the periods beginning the Effective Date of this Order. Records must be submitted on or before the seventh day of the month following the end of the quarterly reporting period (for example, if the quarterly period ends July 31st then the submission is due August 7th).

Effect of Order

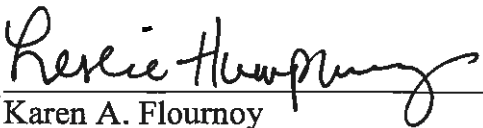
42. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
43. 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.
44. Nothing in this Order shall limit 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.
45. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, 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.
46. 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.

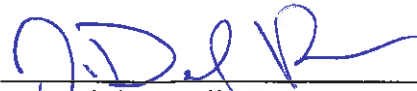
47. All submissions to EPA required by this Order shall be sent to:

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

48. 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. 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.
49. 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).
50. The terms of this Order shall be effective and enforceable against Respondent upon the date of its issuance as evidenced by the date stamp on the first page of this Order.

Date 8-15-2011


for Karen A. Flournoy
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.

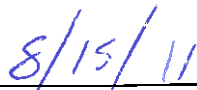
I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter to:

Mr. A.J. Jones
Yard Manager
Callicrate Feed Yard
940 County Road 12, P.O. Box 748
St. Francis, Kansas 67756.

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:

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





Date