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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

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

BEFORE THE ADMINISTRATOR

)	
)	Docket No. CWA- 07-2010-0061
)	
JEWELL COUNTY FEEDERS, L.L.C.)	
MANKATO, KANSAS)	
)	
)	
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 Jewell County Feeders, L.L.C, who owns and operates an animal feeding operation permitted to confine 4,990 head of cattle near Mankato, Kansas.

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. 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.
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, EPA promulgated regulations codified at 40 C.F.R. § 122. Under C.F.R. § 122.1, an 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 authorized to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an animal feeding operation ("Facility") that is located in the Southwest ¼ of Section 10, Township 3 South, Range 9 West, in Jewell County, Kansas.
15. On August 19, 2009, 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 that confines cattle while cattle are present.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. At the time of the EPA inspection, the Facility was confining approximately 4,457 head of beef cattle. The number of beef cattle confined and fed at the Facility is greater than 1000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4)), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
20. Respondent is currently operating under an NPDES permit (KS0119695) which was issued on October 3, 2005, and expires on October 2, 2010.
21. The cattle feeding operation is located on the east and west sides of a tributary to Limestone Creek. Several confinement pens, sick pens, working pens (pens 121 and 122), receiving pens, feedstock storage area, and the cattle alleyway do not have adequate livestock and related waste controls. The EPA inspection identified pools of process waste water located in the tributary to Limestone Creek from these areas at the Facility.
22. The tributary converges with Limestone Creek approximately 0.6 miles south of the facility. Limestone Creek and its tributary are waters of the United States, as defined under 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 Limestone Creek and its tributary.
24. Based on the size of the Facility, the distance from the Facility to Limestone Creek and its tributary, and the slope and condition of the land across that distance, wastewater containing pollutants from production areas at the Facility will continue to flow into the unnamed tributary of Limestone Creek during precipitation events less than a 25 year, 24 hour storm event.

Findings of Violation

Count 1(Uncontrolled Runoff)

25. Respondent's NPDES permit requires Respondent to operate and maintain water pollution control facilities to prevent the discharge of pollutants into waters of the state. The NPDES permit further requires that runoff and wastewater containing livestock or related waste not collected by water pollution control facilities shall be controlled in a manner to prevent water pollution. Respondent's NPDES permit also states that solids such as manure may be stockpiled temporarily (not to exceed six months) but the stockpiles shall be located in areas not subject to uncontrolled runoff or leaching.
26. The tributary to Limestone Creek runs through the middle of working pens 121 and 122 (also referred to as 45-day pens or limited use pens), and adjacent to sick pens, and the cattle alleyway. These portions of the facility and the feedstock storage area did not contain water pollution control facilities necessary to prevent the flow of wastewater into the unnamed tributary and Limestone Creek. During the EPA inspection referenced in paragraph 15 above, inspectors observed pools of process waste water in the unnamed tributary of Limestone Creek resulting from pollutant discharges from these production areas. Respondent failed to control runoff and wastewater in a manner that prevented water pollution and thus violated the NPDES permit and the CWA.
27. During the EPA inspection referenced in paragraph 15 above, inspectors observed areas at the facility that lacked adequate runoff controls. Discharges from these production areas are a violation of the NPDES permit and the CWA.
28. During the EPA inspection referenced in paragraph 15 above, inspectors observed that Respondent had placed stockpiles of manure located northwest of pen 76 and west of the west lagoon. Inspectors observed that both of the stockpiles were accumulated in areas that lacked runoff controls. Based on statements by the facility owner, the stockpile near pen 76 had been at this location since June of 2009. The failure to stockpile manure in a manner required by the NPDES permit is a violation of Respondent's permit and, as such, is a violation of Section 402 of the CWA. Any discharge of pollutants from the stockpiles to waters of the United States is a violation of Section 301 of the CWA.

29. The flow of wastewater from Respondent's production areas during significant rain events to Limestone Creek and its tributaries constitute unauthorized discharges of pollutants from a point source to waters of the United States and, as such, are a violation of Section 301 of the CWA.

Count 2 (Storage Capacity)

30. Respondent's NPDES permit requires that dewatering of livestock waste retention structures shall be conducted on all days suitable for land application when available storage capacity is less than required by the permit.
31. According to Respondent's operating records, from January 2008 through August 2009, Respondent failed to maintain adequate operating levels as required by its NPDES permit and failed to dispose of waste water contained within its runoff storage structures on days defined by the permit as suitable for land application.
32. Respondent's failure to dewater retention structures on days suitable for land application when required is a violation of its NPDES Permit, and as such, is a violation of Section 402 of the CWA.

Count 3 (Recordkeeping)

33. Respondent's NPDES permit states that available storage depth shall be recorded daily whenever the water level infringes on the required operating levels or the required storage capacity is not available in any retention structure. Daily recording of storage depth must continue until the required storage capacity is again available.
34. According to Respondent's records for January 2008 through August 2009, records were not kept daily as required by the NPDES permit when operating levels were exceeded, as required by the NPDES permit.
35. Respondent's failure to record available storage depth daily when the water level exceeded the required operating levels is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

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:

36. Respondent shall immediately comply with all terms of its NPDES permit and the CWA. Among other things, Respondent shall not stockpile manure in areas where runoff is not controlled, shall not confine or process cattle in areas (including those pens referred to as 45-day pens) unless adequate runoff controls are in place to prevent unauthorized discharges and water pollution. Respondent shall ensure that adequate storage is maintained in waste retention structures and storage measurements are recorded and maintained in accordance with the NPDES permit. Furthermore, Respondent shall ensure feedstock storage areas have runoff controls adequate to prevent unauthorized discharges.
37. If Respondent is unable to prevent all unauthorized discharges from uncontrolled production areas at the Facility then Respondent shall remove cattle and manure from these areas, and properly dispose of the manure, within 30 calendar days of receipt of this Order. Respondent shall cease the use of these areas until adequate runoff controls are constructed.
38. Within thirty (30) days of the effective date of this Order, Respondents shall inform EPA in writing, of all actions taken to comply with its NPDES permit, the CWA, and the terms of this Order.
39. On an ongoing basis, dewatering shall be initiated and conducted on all days suitable for land application of waste until the required lagoon storage capacities are again available. Respondent shall comply with all applicable requirements regarding the proper land application of wastewater.
40. If Respondent intends to construct manure, litter, or process wastewater control structures or intends to repair structures where they are inadequate to control runoff, Respondent shall submit written monthly progress reports to EPA beginning within thirty (30) days of the effective date of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the 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.
41. Respondent shall submit a Notice of Construction completion certified by a professional engineer to EPA within thirty (30) days of completing construction or repair of manure, litter, or process wastewater control structures. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
42. Commencing upon the effective date of this Order and continuing for one year, Respondent shall on a quarterly basis submit to EPA copies of all lagoon level, soil condition, precipitation, and land application monthly records that Respondent is required to keep in accordance with the Respondent's NPDES permit. Respondent shall submit

copies of these records to EPA on a quarterly basis for the periods of March-May, June-August, September-November, and December-February. Records must be submitted on or before the seventh day of the month following the end of the period (June 7, September 7, December 7, and March 7).

Effect of Order

43. 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.
44. 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.
45. 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.
46. 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.
47. 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.
48. All submissions to the EPA required by this Order shall be sent to:

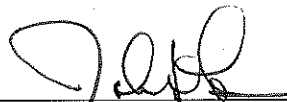
Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

49. 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

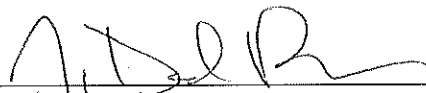
confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert 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.

50. 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).
51. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 2/12/2010



William A. Spratlin
Director
Water, Wetlands and Pesticides Division



J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

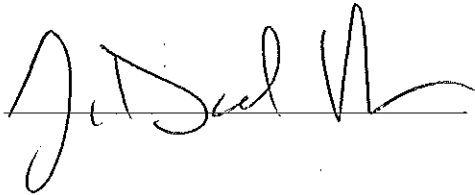
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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:

Randy R. Dean
Jewell County Feeders, LLC
Route 2, Box 56
Mankato, Kansas 66956.

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:

Karl Muedener, Director
Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612.



2-10-2010
Date