

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation into the navigable waters of the United States without obtaining the necessary permit(s) required by Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

3. 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. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

4. The CWA prohibits the unpermitted discharge of “pollutants” by any “person” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, among other things, biological materials and agricultural waste discharged to water.

6. “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.”

7. An “animal feeding operation” 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.

8. According to 40 C.F.R. § 122.23(b)(2) a “concentrated animal feeding operation” is an animal feeding operation that meets the definition of either a Large CAFO or Medium CAFO under 40 C.F.R. § 122.23(b)(4) or 40 C.F.R. § 122.23(b)(6).

9. “Large CAFO” is defined by 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation where at least “1,000 cattle other than mature dairy cows or veal calves” are stabled or confined.

10. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include interstate rivers and streams, and tributaries thereto.

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11. The Nebraska Department of Environmental Quality ("NDEQ") is the agency within the state of Nebraska with the delegated authority to administer the federal NPDES program pursuant to Section 402 of the CWA. NDEQ's authority is found in the Nebraska Environmental Protection Act (Secs. 81-1504 (11), Reissue 1987) and the State of Nebraska Department of Environmental Quality, Title 119, Rules and Regulations Pertaining to the ~~Respondent is a corporation and therefore a person as defined by Section 102 of~~ the CWA, 33 U.S.C. § 1362.

15. On May 18, 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 animal feeding operation 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 number of cattle confined and fed at the Facility is above the threshold defined in 40 C.F.R. § 122.23(b)(4)(iii) for Large CAFOs.

20. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4)(iii), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). As a result, the Facility is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. At the time of the EPA inspection, the Facility was confining approximately 5,800 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).

22. Runoff from pens numbered 1, 3, 5, 7, 15, and 17 flows east-southeast toward an unnamed tributary of the Little Blue River.

23. An unnamed tributary of the Little Blue River runs south from Respondent's property and meets up with the Little Blue River located approximately 0.75 miles southeast of the Facility. The Little Blue River is a water of the United States, as defined by 40 C.F.R. Part 122.2. The Little Blue River is impaired for fecal coliform, a contaminant typically found in feedlot runoff.

24. At the time of the EPA inspection, with the exception of pens 1, 3, 5, 7, 15, and 17, the Facility had debris basins and holding ponds to control runoff. When operated properly these structures should prevent discharges of feedlot runoff from the controlled areas to waters of the United States.

Factual Allegations

25. Based on the size of the Facility, the distance from the Facility to waters of the United States, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility flowed into the Little Blue River during significant precipitation events.

26. Wastewater runoff discharged from the Facility into the Little Blue River during and after significant precipitation events, contained "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

Alleged Violations

27. The Stipulated Facts and Factual allegations set forth in paragraphs 13 through 26 are incorporated herein.

28. The flows of wastewater from Respondent's Facility to the unnamed tributary and the Little Blue River constitute unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. § 1311 and 1342, and implementing regulations.

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CONSENT AGREEMENT

29. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement and Final Order.

30. Respondent admits the Stipulated Facts and neither admits nor denies the Factual Allegations contained in this Consent Agreement and Final Order.

31. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

32. Respondent and Complainant each agree to bear their own costs and attorney's fees.

33. Nothing contained in the Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of sixty-three thousand dollars (\$63,000). Due to the fact that Respondent will incur significant expense in the construction of livestock waste management controls, EPA permits Respondent to pay the penalty on an installment schedule. The payments shall be as follows:

A. Respondent shall pay the penalty in quarterly installments of Fifteen Thousand Nine Hundred Twenty-one Dollars and Sixty-one Cents (\$15,921.61) that includes principal and accrued interest for a period of one (1) year beginning thirty (30) days after the effective date of this Consent Agreement and Final Order.

B. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently two percent per annum for the period January 1, 2006, through December 31, 2006), compounded daily.

C. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

D. The parties agree that Respondent shall not be subject to a penalty for early payment of the penalty.



35. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. EPA Region 7
P.O. Box 371099M
Pittsburgh, PA 15251.

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101;

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

36. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

37. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

38. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance at the Facility with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. The effect of the settlement described in paragraph 37 above is conditional upon the accuracy of this certification.

39. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

40. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

41. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

7/7/06
Date

Tom Roode
Tom Roode, President
Roode Feedlot, Inc

For the United States Environmental Protection Agency - Region 7

8/28/06
Date

J. Daniel Breedlove
J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7

08/28/06
Date

Betty J. Berry
Betty J. Berry
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7

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FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.



CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____ 2006, I filed the original of the foregoing Consent Agreement and Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; a true and correct copy of the same was sent by first class mail on the ___ day of _____ 2006, to the attorney for Roode Feedlot, Inc.

Name

Date

A handwritten signature in black ink, appearing to be the initials 'RRO' or similar, located in the bottom right corner of the page.

IN THE MATTER OF Roode Feedlot, Inc., Respondent
Docket No. CWA-07-2006-0179

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert R. Otte
Morrow Poppe Otte Watermeier and Phillips PC
Box 83439
Lincoln, Nebraska 68501

Dated: 8/30/06


Kathy Robinson
Hearing Clerk, Region 7