

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

Kyle Greenlee)
d/b/a) Docket No. CWA-07-2014-0021
Greenlee Animal Feeding Operation)
Sac City, Iowa)
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, Kyle Greenlee, owns and/or operates an animal feeding operation located in the southwest ¼ of the northwest ¼ of Section 20 in Township 88 North, Range 35 West, in Sac County, 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. 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 of pollutants may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.
5. 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.”
6. “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.
7. “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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
8. 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)(1), the owner or operator of a CAFO must apply for an NPDES permit if the CAFO discharges a pollutant into a water of the United States.
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 Medium CAFO in accordance with 40 C.F.R. § 122.23(b)(6).
11. “Medium CAFO” is defined according to 40 C.F.R. § 122.23(b)(6) as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves” and either of the following conditions are met:
 - a. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

b. Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

12. "Production Area" is defined by 40 C.F.R. 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers and bedding materials. The waste containment includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23 as water "directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding."
14. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
15. The Iowa Department of Natural Resources ("IDNR") is the agency within the state of Iowa authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

16. Respondent owns and/or operates an animal feeding operation ("Facility") that is located in the southwest ¼ of the northwest ¼ of Section 20 in Township 88 North, Range 35 West, in Sac County, Iowa. The Facility confines beef cattle within a confinement barn with a capacity of 999 head. Outdoor working/sorting pens or cow yards at the Facility are used for working and/or sorting cattle.

17. On April 23, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. The Facility received approximately one inch of rain within 24 hours of the inspection but it was not raining at the time of the inspection. The inspectors observed that process wastewater from the sorting/working pens flowed into and through a buried drain line into the road ditch on the north side of 255th Street. The inspectors also observed that the feedstock storage area lacked runoff controls to prevent process wastewater from flowing into the same road ditch on the north side of 255th Street. Inspectors sampled the process wastewater in the road ditch. Sample results identified that the process water contained, among other pollutants, approximately 173,000 colonies per 100 milliliters sampled of *Escherichia coli*.
18. During the inspection, inspectors observed that the process wastewater flowed under 255th Street toward Cedar Creek. The inspectors followed the process wastewater flow an additional 200 yards toward Cedar Creek and observed the flow ceased approximately 200 yards from Cedar Creek. However, the inspectors observed that overland flow continued south to Cedar Creek through a grassed pasture and hydraulic modeling supports the conclusion that AFO-related pollutants discharge to Cedar Creek.
19. The roadside ditch along 255th Street is a man-made ditch pursuant to 40 C.F.R. § 122.23(b)(6).
20. Cedar Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. § 122.2. Cedar Creek is a tributary to the North Raccoon River. IDNR has identified North Raccoon River as being impaired by bacteria caused by pathogens. This impairment is routinely associated with runoff from AFOs.
21. Facility records and Respondent's statements confirm that the Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
22. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.
23. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
24. The Facility was confining approximately 928 head of beef cattle at the time of the April 23, 2013, EPA inspection.
25. Based on inspector observations and Facility records, at times pertinent to this order the number of cattle confined and fed at the Facility was between 300 and 999, and

stormwater containing pollutants flowing from the Facility passed through the roadside ditch and discharged into waters of the United States. Therefore, the Facility is a Medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6).

26. The Facility is a CAFO as defined by 40 C.F.R. § 122.23(b)(2), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
27. The Facility does not have adequate livestock waste control facilities to prevent the discharge of manure, litter, and wastewater into Cedar Creek.
28. Respondent has not applied for an NPDES permit for the Facility.
29. The intermittent yet ongoing flow of wastewater from Respondent's Facility through the man-made ditch and into Cedar Creek without NPDES permit authorizations constitutes unauthorized discharges of pollutants from a point source to waters of the United States. The unauthorized discharges are violations of Section 301 of the CWA, 33 U.S.C. §1311, and implementing regulations.

Order for Compliance

Based on the Findings of Violation set forth in paragraphs 16 through 29 above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. §1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

30. Within fifteen (15) days of the effective date of this Order, Respondent shall submit an Interim Measures Plan (Plan) to EPA. The Plan shall describe, in detail, actions that Respondent will take to reduce the discharge of pollutants from Respondent's Facility to waters of the United States. The Plan shall include a schedule for implementation of the interim measures. The interim measures shall remain in place and operated until Respondent completes construction of the feedlot waste controls as required by IDNR or otherwise complies with the CWA. Respondent shall implement the Plan immediately.
31. Respondent shall operate the Facility so that process wastewater discharges are not facilitated by man-made conveyances or otherwise comply with the CWA by ceasing all pollutant discharges to waters of the United States; apply for an NPDES permit for the Facility within one hundred and eighty (180) days of the effective date of this Order; or permanently reduce the number of livestock confined at the Facility below regulatory thresholds within one hundred and eighty (180) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the design, construction, operation, and maintenance of livestock waste controls.

32. By November 1, 2014, Respondent shall complete construction of feedlot waste controls required by IDNR pursuant to the NPDES permit. If construction is not completed by this date, Respondent shall cease operations within areas of the Facility where feedlot runoff cannot be managed to prevent unauthorized discharges to waters of the United States. If Respondent is unable to prevent unauthorized discharges by this date then Respondent shall reduce the number of cattle confined at the Facility below regulatory threshold for a Medium CAFO until the controls are in place. Respondent shall not repopulate cattle above this regulatory threshold at the Facility unless the Facility can be operated in a manner that complies with the CWA.
33. If Respondent intends to apply for an NPDES permit and construct runoff controls to allow the confinement of cattle above regulatory thresholds, then beginning thirty (30) days after receipt of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports 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.
34. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

General Provisions

Opportunity to Confer

35. This Order shall become effective 30 days after its receipt by Respondent. Prior to the effective date, Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

36. Requests for a conference shall be made in writing to EPA contact identified in Paragraph 42.


Effect of Order

37. 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. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at the following website: <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
38. 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.
39. 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.
40. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.
41. 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.
42. All submissions to EPA required by this Order shall be sent to:

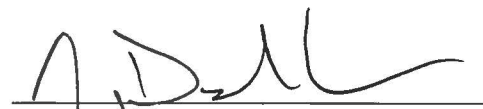
Lantz Tipton
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

43. 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 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.
44. 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).
45. The Effective Date of this Order shall be 30 days following Respondent's receipt of the Order. The terms of this Order shall be effective and enforceable against Respondent upon the Effective Date.

Jan. 7, 2014
Date



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



J. Daniel Breedlove
Senior Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed 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:

Mr. Kyle Greenlee
3209 255th Street
Sac City, Iowa 50583.

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:

Mr. Ken Hessenius
Iowa Department of Natural Resources
Field Office #3
Gateway North Mall
1900 North Grand Avenue
Spencer, Iowa 51301.



01-08-14
Date