

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

09 JUL 31 AM 8:05

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

	)	
	)	
DAVID & PEG BRUCE	)	Docket No. CWA-07-2009-0100
d/b/a/ BRUCE FEEDLOT	)	
	)	
MILLS COUNTY, IOWA	)	
	)	
Respondents,	)	FINDING OF VIOLATION
	)	ORDER FOR COMPLIANCE
	)	
	)	
Proceedings under	)	
Section 308(a) and 309(a)(3)	)	
of the Clean Water Act,	)	
33 U.S.C. §§ 1318(a) and 1319(a)(3)	)	
	)	

**Preliminary Statement**

1. The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318(a) and 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. David and Peg Bruce (“Respondents”), doing business as Bruce Feedlot, operate an animal feeding operation (“Facility”) that is located in the Southwest ¼ of Section 17 in Township 72 North, Range 40 West, in Mills 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. 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, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 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 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**

14. Respondents own and operate an open cattle feedlot that is located in the Southwest ¼ of Section 17 in Township 72 North, Range 40 West, in Mills County, Iowa.
15. On June 5, 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's feeding areas.
18. 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(14) of the CWA, 33 U.S.C. § 1362(14).
19. At the time of the EPA inspection, the Facility was confining approximately 1,300 head of cattle. The Facility is permitted to confine up to 3,000 head of cattle.
20. 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).
21. Bruce Feedlot was issued an NPDES permit (IA0077551) by IDNR on June 23, 2000, with an expiration date of June 22, 2005. IDNR has administratively extended the terms of the NPDES permit.
22. Manure, litter, and process waste water from the eastern portion of the Facility flows directly into an unnamed intermittent tributary. This tributary flows south approximately 0.8 miles before discharging into Indian Creek. Manure, litter, and process waste water from the western portion of the Facility flows west through cropland for approximately 0.5 miles before discharging into the county drainage ditch along state highway 34. From this point runoff flows west through the drainage ditch approximately 1 mile before discharging into Indian Creek.
23. Indian Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.

24. On May 14, 2009, IDNR staff observed process waste water from the feedlot discharging into the Indian Creek tributary adjacent to the Facility. IDNR collected water samples from the tributary. Samples results indicated elevated E.coli bacteria, ammonia, total suspended solids and biological oxygen demand (BOD) resulting from the discharge. The discharge was a result of a precipitation event that was significantly less than a 25-year, 24-hour precipitation event.
25. The Facility does not have adequate livestock waste control facilities to prevent the discharge of manure, litter and process waste water to Indian Creek and its tributaries.
26. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Indian Creek and its tributaries, and the slope and condition of the land across that distance, manure litter and process waste water will continue to discharge into Indian Creek and its tributaries as a result of precipitation events less than a 25-year, 24-hour storm event (5.5 inches).
27. Respondents' NPDES permit and federal regulations prohibit the discharge of feedlot runoff (i.e., manure, litter, and process waste) unless the feedlot is designed, constructed, operated, and maintained to prevent all discharges except those associated with a precipitation event equal to or greater than a 25-year, 24-hour precipitation event.
28. The ongoing flow of process wastewater from Respondents' Facility to Indian Creek and its tributaries as a result of significant precipitation events constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Respondents' NPDES permit and Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

### **Order for Compliance**

Based on the Findings of Violation set forth above, and pursuant to Section 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondents are hereby ORDERED to take the following actions to eliminate its violations of the CWA:

29. Immediately upon receipt of this Order, Respondents shall cease all discharges of manure, litter or process waste water from the Facility to waters of the United States, except those authorized by Respondents' NPDES permit, and comply with all other terms of the NPDES permit.
30. If manure, litter or process wastewater cannot be managed at the Facility in a manner that prevents unauthorized discharges to waters of the United States, then Respondents shall

reduce the number of cattle confined at the Facility below regulatory thresholds within thirty (30) days of receipt of this Order. Respondents shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents all unauthorized discharges to waters of the United States.

31. If Respondents cannot immediately cease all unauthorized discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondents shall immediately remove and properly dispose of manure, litter, and process wastewater from areas that cannot be controlled in a manner to prevent discharges.
32. Within forty-five (45) 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.
33. If Respondents intend to construct adequate runoff control structures 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 Respondents submit a Notice of Construction Completion to EPA, Respondents 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, Respondents 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.

#### **Effect of Order**

35. 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.
36. Compliance with the terms of this Order shall not relieve Respondents 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.

37. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Facility, and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
38. 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.
39. 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.
40. All submissions to EPA required by this Order shall be sent to:

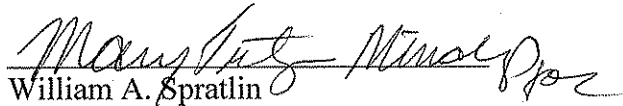
Stephen Pollard  
CAFO Enforcement Program  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.
41. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondents may assert a business confidentiality claim covering 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 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.
42. 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 \$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 Act, 33 U.S.C. § 1319(b).

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

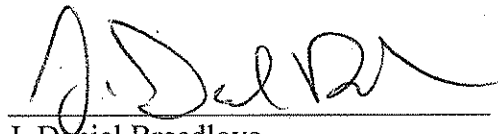
Date

7/29/09

  
\_\_\_\_\_  
William A. Spratlin

Director

Water, Wetlands and Pesticides Division

  
\_\_\_\_\_  
J. Daniel Breedlove

J. Daniel Breedlove

Assistant Regional Counsel

**CERTIFICATE OF SERVICE**

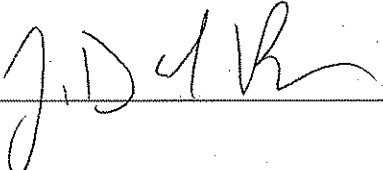
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 and small business assistance information, to the following address:

David and Peg Bruce  
Bruce Feedlot  
37761 Highway 34  
Hastings, Iowa 51540.

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:

Daniel Stipe  
Field Office Supervisor  
Field Office #4  
Iowa Department of Natural Resources  
140 Sunnyside Lane  
Atlantic, Iowa 50022.

  
\_\_\_\_\_

7/31/2009  
\_\_\_\_\_  
Date