



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Phone 800-227-8917
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SEP - 6 2011

Ref: 8ENF-W-NP

CERTIFIED MAIL#:
RETURN RECEIPT REQUESTED

Floyd Craig Gabel
Gabel Farms
65 Gabel Lane
Kinsey, Montana 59338

Re: Gabel Farms Inspection Report
Findings of Violation and Administrative
Order for Compliance
Docket No. CWA-08-2011-0026

Dear Mr. Gabel:

On April 11, 2011, the United States Environmental Protection Agency (EPA) performed an inspection of the cattle feedlot located at 65 Gabel Lane, Kinsey, MT. A copy of the report from the inspection (report) is enclosed. Please pay special attention to the Summary of Findings section of the report. Please note that the EPA inspector discussed his observations and concerns during the exit interview.

Also enclosed is an EPA Region 8 administrative order (Order) that finds that, Floyd Craig Gabel (the Respondent) has violated the Clean Water Act (the CWA) by discharging pollutants without a permit. The Order also directs the Respondent to come into compliance with the CWA. EPA's authority for such action is provided under § 309(a) of the CWA, 33 U.S.C. § 1319(a), which authorizes the Administrator of the EPA to issue an order to any person found to be in violation of § 301 of the CWA, among others, or in violation of any condition or limitation implementing such sections in a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA or an authorized State. The enclosed order is also issued pursuant to § 308(a) of the CWA, 33 U.S.C. § 1318(a), which authorizes the EPA to require, among other things, reports and information to carry out the objectives of the CWA.

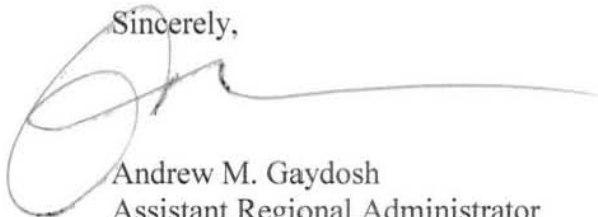
The CWA requires the EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA, 33 U.S.C. § 1319, authorizes civil judicial penalties for violating an order issued under § 309(a) of the CWA. The CWA authorizes a variety of possible enforcement actions for noncompliance with the CWA, including civil or criminal actions, administrative penalty actions, and, in some cases following a criminal conviction, debarment from Federal contracts and/or loans. Additionally, EPA may take an enforcement action if this Order is violated. Please also be advised that the issuance of this Order does

not preclude any civil lawsuit, criminal prosecution, or administrative penalty assessment for the violations cited in the Order or for any other violations of the CWA.

If the Respondent is a small entity, you may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet useful. It contains information on compliance assistance resources and tools available to small entities. SBREFA does not eliminate the responsibility to comply with the Order or the CWA.

Please review the report and the order carefully and ensure that all of the requirements in these documents are fully and timely completed. If you have any questions, the most knowledgeable people on my staff are Jean Belille, Enforcement Attorney, at 303-312-6556 and Seth Draper, Environmental Scientist, at 303-312-6763. We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: 1) Administrative Order for Compliance
2) Inspection Report, Photo Log, 3560 Form, Summary of Findings
3) SBREFA Information Sheet
4) SPCC Guidance Sheet

cc: Kari S. Smith, MDEQ



2011 SEP -6 PM 2: 16

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

EPA REGION VIII
BOARDING CLERK

IN THE MATTER OF:)	ADMINISTRATIVE
)	ORDER FOR COMPLIANCE
Floyd Craig Gabel)	
Gabel Farms)	
65 Gabel Lane)	Proceeding under §§ 308(a) and
Kinsey, Montana)	309(a) of the Clean Water Act, 33 U.S.C.
)	§§ 1318(a) and 1319(a)
Respondent.)	
_____)	Docket No. CWA-08-2011-0026

I. PRELIMINARY STATEMENT

1. This Administrative Order for Compliance (Order) is issued pursuant to § 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by any person found to be in violation of §§ 301 or 308 of the Act, among others, or in violation of any permit condition or limitation implementing § 402 of the Act. This order is also issued pursuant to § 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require submission of information to determine compliance with the Act. These authorities have been delegated to the Regional Administrator of EPA Region 8 and redelegated to the undersigned official.

2. Respondent Floyd Craig Gabel (Respondent) is an individual with the address of 65 Gabel Lane, Kinsey, MT 59338-9000.

3. Respondent owns and/or operates an animal feeding operation located at the same address as above(the facility).

II. STATUTORY AND REGULATORY BACKGROUND

4. Section 301 of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.

5. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA and, under certain circumstances, authorized states, to permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
6. EPA has approved the State of Montana's NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).
7. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."
8. "Pollutant" is defined by § 502(6) of the Act, 33 U.S.C. § 1362(6), to include, among other things, biological material and agricultural waste discharged into water.
9. "Point source" is defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged."
10. To implement § 402 of the Act, EPA promulgated regulations codified at 40 C.F.R. part 122. According to 40 C.F.R. § 122.23(d), the owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges. *Id.*
11. "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 12-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.
12. "Concentrated animal feeding operation" or "CAFO" is defined in 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or a Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
13. "Medium CAFO" is defined at 40 C.F.R. § 122.23(b)(6) to include an animal feeding operation that stables or confines 300 to 999 cattle other than mature dairy cows or veal calves.
14. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include, among other things, interstate waters and tributaries thereto.
15. "Process wastewater" is defined in 40 C.F.R. § 122.23(b)(7) as water "directly or indirectly used in the operation of the AFO for any 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.” Id.

16. The Montana Department of Environmental Quality (MDEQ) is the agency within the state of Montana that is authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs to enforce NPDES violations.

III. FINDINGS OF VIOLATION

17. On April 11, 2011, an EPA inspector inspected the facility and observed the following:

- a. The facility is located near Kinsey, Montana and is approximately 700 feet from the Yellowstone River,
- b. has a manmade conveyance that carries manure or wastewater to surface water, and,
- c. EPA observed process wastewater and manure within the riparian zone of the Yellowstone River.
- d. the facility’s access road provided a pathway from which a large volume of manure and process wastewater had flowed down and entered the riparian zone,
- e. the facility has also placed a pipe that drains the western pen process wastewater and manure to the riparian zone as well, and
- f. the facility’s access road and the buried pipe constitute a man-made conveyance which directs process wastewater to the riparian zone of the Yellowstone River.

18. The facility’s access road and the facility’s pipe that drains the western pen are man-made devices that discharge processed water and manure into the riparian zone of the Yellowstone River which is an interstate, navigable-in-fact waterway and a United States as defined in 40 C.F.R. § 122.2.

19. The degradation or destruction of the riparian zone of the Yellowstone River have an affect or could affect the Yellowstone River which is an interstate, navigable-in-fact waterway.

20. The facility confines and feeds or maintains cattle for a total of 45 days or more in any 12-month period.
21. Crops, vegetation, forage growth, and post harvest residues are not sustained in the normal growing season over any portion of the facility's feeding areas.
22. The facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
23. The facility was confining and feeding approximately 880 cattle at the time of the EPA inspection. The facility has a capacity for 950 cattle.
24. Because the number of cattle confined at the facility is greater than or equal to 300 and less than 999, the facility is a CAFO as defined in 40 C.F.R. § 122.23(b)(2) and § 502(14) of the Act, 33 U.S.C. § 1562(14), and a medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).
25. Respondent is a "person" within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5).
26. Respondent has not applied for or received coverage under an NPDES § 402 permit as required under 40 C.F.R. § 122.23.
27. Respondent has discharged pollutants from the facility to waters of the United States without an NPDES permit, in violation of § 301(a) of the Act, 33 U.S.C. § 1311(a).

IV. ORDER

Based on the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, Region 8, it is hereby ORDERED as follows:

1. Respondent shall immediately cease and desist discharging pollutants into waters of the United States unless such discharges are in accordance with a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.
2. Within ten (10) calendar days of receipt of this Order, Respondent shall submit to EPA written notice of its intent to comply with the requirements of this Order.
3. Respondent shall immediately conduct daily visual monitoring of all potential sources of discharges containing manure, waste silage, and/or feed to waters of the United States from the facility. Monitoring locations shall include but are not limited to: the area in the southeastern

border of the facility, and areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, and waste storage lagoons.

4. Respondent shall immediately develop and maintain a written monitoring log containing the following information for each area monitored as required by the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondent shall maintain the monitoring records at the facility for at least three (3) years after the date of this Order and make them available for inspection or copying upon request by any authorized representatives of EPA and the MDEQ.

5. Respondent shall immediately conduct daily monitoring of precipitation at the facility, using a rain gauge. Respondent shall record and maintain records of precipitation amounts with the monitoring records required by this Order.

6. For each observed discharge of any agricultural waste or other pollutant(s) from the facility that may enter any water of the United States, Respondent shall:

- a. Within two (2) hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to a laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R., part 136 for fecal coliform, 5-day Biochemical Oxygen Demand (BOD5), Ammonia, Nitrate-Nitrite, and Total Suspended Solids;
- b. Submit to EPA and MDEQ with fifteen (15) calendar days of the discharge a written report containing:
 - 1) date and time of the discharge;
 - 2) location of the discharge;
 - 3) origin of the discharge;
 - 4) estimated volume of the discharge;
 - 5) daily rainfall measurements for the 30 days prior to the discharge event;
 - 6) sample analysis results of the discharge; and,
 - 7) steps taken to prevent reoccurrence of the discharge.

Timely reporting of an unpermitted discharge does not authorize any such discharge. Also, any reporting of a discharge does not alleviate any further EPA or MDEQ enforcement action.

7. Within thirty (30) calendar days of receipt of this Order, Respondent shall submit a written report to EPA and MDEQ of the actions the Respondent has taken to remove the manure, waste silage, and/or feed from all areas in the Yellowstone River riparian s area.

8. Within thirty (30) calendar days of receipt of this Order, Respondent shall provide to EPA and MDEQ a Best Management Practice (BMP) implementation plan (plan) for review and approval. The plan shall set forth measures that the Respondent will take to prevent the discharge of pollutants from the facility to waters of the United States. The measures must include, but need not be limited to: the area in the southeastern border of the facility and, areas of potential or actual discharges from fields subject to land application of wastes, confinement areas, silage piles, or waste storage lagoons. The plan shall also include a schedule for completing implementation of the measures within sixty (60) days of approval of the plan and schedule by EPA. Respondent shall respond to any EPA comments on the plan and schedule within fifteen (15) days of receipt of the comments. Upon approval by the EPA, the schedule will be an incorporated into this Order as an enforceable requirement.

9. Unless Respondent demonstrates to EPA's satisfaction that the Respondent will not discharge from the facility to waters of the United States, Respondent shall within ninety (90) days of receipt of this Order, submit a complete application for an NPDES permit to MDEQ. The application must include a site-specific Nutrient Management Plan (NMP) that meets the requirement of 40 C.F.R. § 122.42(e). Additionally, the facility must meet the MDEQ requirements specified in the Administrative Rules for Montana 17.30.1330(1).

10. Respondent shall provide each notification or report required by this Order, and a copy of the permit application referenced in paragraph 9, above, to the following:

Seth Draper
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Draper.seth@epa.gov
Phone: 303-312-6763

and

Kari S. Smith, Supervisor
Compliance and Technical Support Section
Water Protection Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

11. Respondent shall submit to EPA and MDEQ monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10th day of every month, until EPA or MDEQ notifies the Respondent, in writing, that it no longer requires such reports. Each report shall

include an update of the progress of the plan required by Par. 8 of this Order and local rainfall amounts for the previous month, as well as copies of all monitoring logs and records required by this Order.

12. Respondent shall allow access to the facility by any authorized representatives of EPA and the MDEQ, including but not limited to any of the agencies' contractors, upon proper presentation of credentials, to the facility and to records relevant to this Order for the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

13. This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the facility, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.


14. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.

15. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$32,500 per day for each violation which occurred from March 15, 2004, through January 12, 2009, and \$37,500 per day for each violation thereafter of § 301 of the Act, 33 U.S.C. § 1311, or of any order issued by EPA under § 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, § 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

16. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

17. This Order shall be effective upon receipt by Respondent.

DATED this 6th day of September, 2011.



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice