

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS

BEFORE THE ADMINISTRATOR

GM FEEDLOT, INC.)	Docket No. CWA 07-2010-0075
)	
Butler, Missouri,)	FINDING OF VIOLATION
)	ORDER FOR COMPLIANCE
Respondent)	
)	
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 GM Feedlot, Inc., who owns and operates a permitted animal feeding operation with a design permitted capacity of 4,820 head of cattle near Butler, Missouri.

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 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 40 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. Moreover, under 40 C.F.R. § 122.23 any CAFO that discharges or proposed to discharge has a duty to apply for an NPDES permit.

7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) 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(14), to include “any discernable, 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. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

10. Respondent’s NPDES Permit No. MO G010383 as a Concentrated Animal Feeding Operation (CAFO) became effective on February 24, 2006. The Permit expires on February 23, 2011.

11. The Missouri Department of Natural Resources (“MDNR”) is the agency within the State of Missouri, 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 MDNR. EPA maintains concurrent enforcement authority with authorized state NDPEs programs for violations of the CWA.

Factual Background

12. Respondent owns and operates an animal feeding operation (“Facility”) that is located in Northwest ¼ of the Southeast ¼ of Section 29, T39N, R29W in Bates County, Missouri; and the Northwest ¼ of the Southwest ¼ of Section 28, T39N, R29W in Bates County, Missouri.

13. On March 4, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility.

14. During the inspection, EPA discovered several violations of Respondent’s NPDES Permit. The EPA inspectors issued a Notice of Potential Violation (NOPV) during the inspection.

Findings of Violation

Count 1(Uncontrolled Runoff)

15. Respondent's NPDES Permit in the Section titled "Effluent Limitations and Monitoring Requirements," Subsection 1, states that Respondent shall not allow a discharge to waters of the state except during storms that exceed a designed storm event.

16. During the EPA inspection referenced in Paragraph 13, inspectors observed evidence that the east lagoon had been discharging near the south corner of the lagoon into a water of the United States. The EPA inspectors also noted that the pens located west of the loadout/chute area did not have process waste water controls. The EPA inspectors noted that the berm in the southeast corner of pen 26 had eroded and had been overtopped. This area will continue to overtop the berm during non-qualifying precipitation events. The EPA inspectors also noted that hayledge and corn had been dumped between the north and south settling basins in the stormwater run off drainage area. Unauthorized discharges from these and all areas of the facility are a violation of the NPDES permit and the CWA.

17. The flow of process wastewater from Respondent's Facility during non-qualifying rain events to Camp Branch and/or the unnamed tributary to Panther Creek constitutes unauthorized discharges of pollutants from a point source to waters of the United States and, as such, is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2 (Storage Capacity)

18. Respondent's NPDES Permit requires that facility be maintained as described in the "Detailed Operation Description." This section of the Permit includes the requirements for Upper and Lower pumpdown levels and storage capacities of lagoons.

19. The EPA inspectors observed evidence that the east lagoon had been overtopping because it does not have the storage capacity required by the NPDES Permit.

20. Respondent's failure to maintain the storage capacity required by its NPDES Permit is a violation of the permit and, as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

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:

21. Respondent shall immediately comply with all terms of its NPDES Permit and the CWA. Respondent shall immediately take the following steps in order to achieve compliance with its NPDES Permit:

- a. Respondent shall remove hayledge or corn in areas where runoff is not controlled;
- b. Respondent shall not confine or process cattle in areas unless adequate runoff controls are in place to prevent unauthorized discharges and water pollution; and
- c. 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 and Paragraph 25 of this Order.
- d. Respondent shall take all necessary and appropriate steps to prevent all unauthorized discharges from uncontrolled production areas at the Facility. If Respondent is unable to prevent such discharges, then Respondent shall remove cattle and manure/process waste from these areas, and properly dispose of the manure/process waste, within 30 calendar days of receipt of this Order. Respondent shall cease the use of these areas until adequate runoff controls are constructed.
- e. Dewatering shall be initiated and conducted on all days suitable for land application of waste until the required lagoon storage capacities are restored. Respondent shall comply with all applicable requirements regarding the proper land application of wastewater. Respondent shall certify that the lagoon staff gauges are accurate and submit information to EPA that gauges meet the original design criteria.

22. 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. This report shall include all actions taken or planned to be taken to dewater the east lagoon to restore its storage capacity and to address all areas of the facility where runoff is not controlled. This report shall also include confirmation that the hayledge/corn has been removed and located to an area of the facility with runoff controls.

23. 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 Respondents submit 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.

24. 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.

25. Upon receipt of this Order, Respondent shall perform the following monitoring and recordkeeping activities: 1) maintain land application records, including dates, location, amounts applied, and application rates; 2) maintain precipitation records; and, 3) record and maintain storage facility liquid levels weekly and after every event with the potential to change the amount of liquid in the storage facility. 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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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
901 N. 5th Street
Kansas City, Kansas 66101.

32. 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.

33. 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).

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

Date: 3-12-10


William A. Spratlin
Director
Water, Wetlands and Pesticides Division