

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. § 122.23(d), an NPDES permit is required for any CAFO that discharges.
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)(4).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) 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 Nebraska Department of Environmental Quality (NDEQ) is the agency within the state of Nebraska authorized to administer the federal NPDES Program. EPA maintains

concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

FACTUAL BACKGROUND

14. Respondent owns and operates an animal feeding operation (Facility) that is located in the Southwest ¼, Section 4, Township 30 North, Range 04 West, in Knox County, Nebraska. The Facility is comprised of outdoor cattle pens with a capacity of approximately 5,000 head.
15. On January 22, 2010, EPA issued an Information Request Letter pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondent seeking information regarding their nutrient management plan and associated land application activities. EPA received the Respondent's initial response on March 17, 2010 and was provided additional information on February 22, 2011.
16. The Facility confines and feeds or maintains cattle and swine 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 that confines animals while cattle or swine are present.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. At all times relevant to this Order, Respondent was operating under an NPDES General permit (NEG010000) which was issued on April 1, 2003, and expired on March 31, 2008. This NPDES permit is administratively extended until NDEQ approves a superseding permit.
20. Respondent's feedlot flows northwest to an intermittent tributary. This intermittent tributary flows 2.3 miles to an unnamed tributary. The unnamed tributary flows 3 miles to Bazile Creek.
21. Bazile Creek and its tributaries are waters of the United States, as defined pursuant to 40 C.F.R. Part 122.2.

FINDINGS OF VIOLATION

NPDES Permit Violations

Failure to Adequately Sample Soil, Manure, and Process Waste Water

22. Respondent's Nutrient Management Plan (NMP) requires that nutrient analysis will be performed on liquid runoff and solid manures at least annually. The NMP requires that soil sampling will be conducted at least annually. Moreover, the NMP requires that manure application rate will be determined by manure sampling information, soil sampling information and crop requirements and that all manure shall be applied at agronomic rates.
23. Based on information provided by the Respondent, at a minimum, Respondent failed to take manure solids analysis, failed to take wastewater analysis, and/or failed to analyze soils samples from 2005 through 2009. Without conducting these required analyses, Respondent was unable to calculate rates that ensured application of manure at agronomic rates.
24. Respondent's failure to adequately sample soil and manure and process waste water generated at its Facility and calculate application rates based on these analyses to apply manure and process waste water at agronomic rates are violations of the NMP which is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

Recordkeeping

25. Respondent's NMP requires that Respondent shall keep records on all manure applications and the records will include, among other things, the date of application, the type and amount applied, field and type of crop to which manure was applied, the number of acres applied to, the calculated application rate, and records will be kept on all manure sold or given away. The NMP also requires that records will be kept on soil sampling results and manure sampling results. The NMP requires that Respondent will keep all records for at least five years.
26. When requested, Respondent was unable to produce records Respondent is required to keep by the NMP and NPDES permit.
27. Respondent's failure to maintain land application, soil sampling, and manure sampling records as required by the NMP and NPDES permit are violations of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

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:

28. Respondent shall immediately comply with all terms of its NPDES permit, its NMP and the CWA. Among other things, Respondent shall immediately perform the following:
- Complete and submit an updated Nutrient Management Plan that meets the requirements of 40 C.F.R. § 122.42(e) to NDEQ within 60 days of the Effective Date of this Order.
 - Initiate record keeping requirements for all land application activities as required by Respondent's current NPDES permit and NMP. Respondent shall modify its recordkeeping activities to satisfy the requirements of any updated or revised NMP or NPDES permit.
 - Land application areas shall be sampled as required by Respondent's current and any revised NMP or NPDES permit.
 - Manure and process waste water shall be sampled as required by Respondent's current and any revised NMP or NPDES permit.
 - Sample results shall be incorporated into the calculation of appropriate land application rates as required by Respondent's current and any revised NMP or NPDES permit.
29. Within thirty (30) days of the effective date of this Order, Respondent shall inform EPA in writing, of all actions taken to comply with its NPDES permit, the CWA, and the terms of this Order.
30. Commencing the Effective Date of this Order and continuing quarterly for 2 years, Respondent shall submit records compiled and retained pursuant to its current and/or revised NMP and NPDES permit. Quarterly submissions shall, at a minimum, document the following:
- a) Date of land application event of manure or process waste water;
 - b) Total quantity of manure and/or process waste water applied and the application rate per acre;
 - c) Identification and location of field to which manure and/or process waste water was applied (including maps demonstrating location within each field where manure or process waste water was applied);
 - d) Identification of whether process waste was in solid or liquid form;
 - e) Source of process waste (i.e. SOFEB, pit etc.); and

- f) The most recent manure or process waste analysis and most recent soil samples from each field submitted with first quarterly report. Subsequent manure analyses and soil samples will be submitted with the next quarterly report that is due.

Respondent shall submit copies of these records to EPA on a quarterly basis (every three months) for the periods beginning the Effective Date of this Order. Records must be submitted on or before the seventh day of the month following the end of the quarterly reporting period (for example, if the quarterly period ends July 31st then the submission is due August 7th).

Effect of Order

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. All submissions to EPA required by this Order shall be sent to:

Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

37. 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.
38. 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).
39. The terms of this Order shall be effective and enforceable against Respondent upon the date of its issuance as evidenced by the date stamp on the first page of this Order.

Date 5-10-11


Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

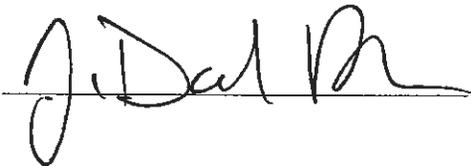
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 to:

Donald J. Stange
88106 536th Avenue
Bloomfield, Nebraska 68718.

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:

Dennis Heitmann
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509.



5/10/11
Date