

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY - REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Ritter Feedyards, L.L.C.)
Beemer, Nebraska)

Respondent)

Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))

Docket No. CWA-07-2011-0094

FINDING OF VIOLATION
ORDER FOR COMPLIANCE

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 Ritter Feedyards, LLC, who owns and operates an animal feeding operation in Beemer, Nebraska. The animal feeding operation (“Facility”) is located in the northern ½ of the northwest ¼ of Section 34, Township 23 North, Range 5 East, Cuming County, Nebraska.

Statutory and Regulatory Authority

3. Respondent is a “person” as that terms is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(12).
4. 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.

5. 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.
6. 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.”
7. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 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.
8. “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.
9. “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.”
10. “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.
11. “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).
12. “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.”
13. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. The Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the State of Nebraska that is authorized to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

15. NDEQ issued a General Permit for CAFOs confining cattle in open lots (NEG011000). This general permit became effective on April 1, 2008 and expires on March 31, 2013.

Factual Background

16. Respondent owns and operates an animal feeding operation that is located in the northern ½ of the northwest ¼ of Section 34, Township 23 North, Range 5 East, in Cuming County, Nebraska (the “Facility”).
17. On March 10, 2011, an EPA inspector flew over the Facility to document site conditions through observations and aerial photography. During the over flight, the EPA inspectors observed cattle being confined and fed in winter feeding areas. The inspector also observed channelized flow paths flowing from winter feeding areas and feedstock storage areas into Rock Creek. Rock Creek flows east for approximately 0.5 miles before discharging into the Elkhorn River.
18. On April 20, 2011, EPA personnel conducted a compliance inspection of the Facility that consisted of a review of facility operations, required records, waste generation and management practices, and a visual inspection.
19. The Facility consists of approximately 40 acres of buildings, open pens, earthen storage basins, and a waste water holding pond.
20. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
21. Neither crops, vegetation, forage growth, nor post harvest residues are sustained 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 has a capacity of 1,200 head of beef cattle and was confining approximately 1,038 head at the time of the April 20, 2011, EPA inspection. 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) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
24. On July 11, 2008, Respondent was issued NPDES permit coverage under the General Permit described in paragraph 15 and was assigned NPDES permit number NEG011179.

25. Rock Creek and the Elkhorn River are waters of the United States, as defined under 40 C.F.R. Part 122.2.

Findings of Violation

Unauthorized Discharges

26. Part II(a)(1) of Respondent's NPDES permit, states that cattle open lot CAFOs are not allowed to discharge manure, litter, or process wastewater pollutants into waters of the State from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater. The overflow may be discharged into waters of the State provided: (1) the livestock waste control facility is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event; (2) such discharge was the result of the rainfall event(s); (3) no feasible alternative to discharging existed; (4) only waste in excess of the storage capacity of the Livestock Waste Control Facility was discharged; (5) the discharge was conducted under such conditions to minimize any adverse effects to waters of the State; and (6) proper notification of the discharge was received.
27. The EPA's over flight on March 10, 2011, and inspection on April 20, 2011, documented that manure, litter, and process wastewater from Respondent's southeast holding pens, feedstock storage areas, winter feeding areas south of holding pens 7-12, and winter feeding areas in the southeast corner of the facility flow south approximately 600 yards before discharging into Rock Creek. Rock Creek flows east for approximately 0.5 miles before discharging into the Elkhorn River. The EPA also documented that manure, litter, and process wastewater from the western portion of holding pen 12 and the winter feeding area northwest of holding pen 12 flow northwest approximately 200 yards before discharging into an unnamed tributary of the Elkhorn River. This tributary flows northeast approximately 0.5 miles before discharging into the Elkhorn River.
28. The Facility does not have adequate livestock waste control facilities to prevent the discharge of manure, litter, and process wastewater into Rock Creek and the Elkhorn River.
29. The intermittent yet ongoing flow of process wastewater from Respondents' Facility into Rock Creek and the Elkhorn River are violations of Respondent's NPDES permit and, as such, are violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 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:

30. Respondent shall immediately comply with all requirements of its NPDES permit and the CWA.
31. Respondent shall immediately cease confinement of cattle within areas of the Facility where manure, litter and process wastewater cannot be managed to prevent unauthorized discharges to waters of the United States.
32. Within thirty (30) days of the effective date of this order, Respondent shall provide EPA with a written description and supporting documentation of the activities and procedures implemented to satisfy the requirements of this Order.
33. If Respondent intends to construct runoff control structures to allow for the confinement of cattle or storage of feedstocks in areas which currently lack runoff controls, then beginning 30 days after the effective date 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 or will be addressed.
34. Upon completion of runoff control structures, Respondent shall submit to the EPA a Notice of Construction Completion within thirty (30) days of when the construction of all feedlot waste control structures is completed. This notification shall be in writing and shall include as-built drawings of the constructed improvements.

Effect of Order

35. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the 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.
36. 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.

37. Nothing in this Order shall limit the 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.
38. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the 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 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.
40. All submissions to the EPA required by this Order shall be sent to:

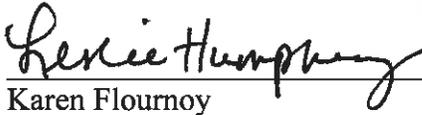
Stephen Pollard
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

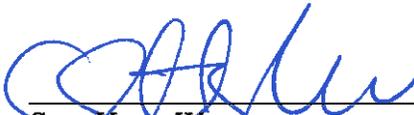
Pursuant to 40 C.F.R. § 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. 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. The 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 Clean Water Act appear in 40 C.F.R. § 2.302.

41. 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 \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 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).
42. The terms of this Order shall be effective and enforceable against Respondent upon its

receipt of the Order.

Date 8-15-2011


for Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division


Sara Hertz Wu
Assistant Regional Counsel
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted 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 Docket 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. Jeremy Ritter
Registered Agent for Ritter Feedyards, LLC
1376 20th Road
Beemer, Nebraska 68716

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 Nebraska:

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

Carah A. Moreno

8/16/11
Date