

Statutory and Regulatory Framework

5. 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. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

6. The CWA prohibits the unpermitted discharge of “pollutants” by any “person” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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 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. The Federal Register preamble to 40 C.F.R. § 122 states that incidental vegetation in a clear area of confinement, such as a feedlot or pen, does not exclude an operation from meeting the definition of an AFO. The preamble also states that the absence of vegetation criterion is evaluated when the animals are confined and, therefore, the use of the lot or facility to grow crops or vegetation when animals are not confined does not exclude the facility from meeting the definition of an AFO.

10. According to 40 C.F.R. § 122.23(b)(2) a “concentrated animal feeding operation” is an animal feeding operation that meets the definition of either a Large CAFO or Medium CAFO under 40 C.F.R. § 122.23(b)(4) or 40 C.F.R. § 122.23(b)(6).

11. “Large CAFO” is defined by 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation where at least “1,000 cattle other than mature dairy cows or veal calves” are stabled or confined.

12. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include interstate rivers and streams, and tributaries thereto.

13. The Missouri Department of Natural Resources (“MDNR”) is the agency within the state of Missouri with the delegated authority to administer the federal NPDES program pursuant

to Section 402 of the CWA. However, Missouri Revised Statute 640.758 exempts livestock markets from, among other things, the requirement to obtain an NPDES permit. The exemption runs counter to and in conflict with the requirements of the CWA. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Findings of Fact

14. Respondent owns and operates a cattle sale barn, a livestock market under Missouri statute, near Carthage, Missouri, that meets the regulatory definition of an animal feeding operation.

15. Respondent has been issued a NPDES permit by the Missouri Department of Natural Resources. However, the permit does not cover discharges for the open lots at the Facility and the Facility confines more cattle in roofed pens than authorized by the permit.

16. On December 8, 2004, EPA personnel conducted an inspection of the Facility.

17. At the time of the EPA inspection, the Facility was confining and feeding approximately 2,000 head of cattle. The number of cattle confined and fed at the Facility is greater than 1,000 and therefore the facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).

18. The Facility confines and feeds or maintains greater than 1,000 cattle for a total of 45 days or more in any 12 month period.

19. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained within the feedlots or confinement areas at the Facility at the time of inspection. Any vegetation that was present at the time of the inspection was incidental.

20. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(3), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. The Facility has been in operation since 1995 and during all times pertinent to this Order has confined greater than 1,000 head of cattle for more than 45 days a year and has had discharges to waters of the United States. As a result the Facility is subject to an NPDES permit under Section 402 of the CWA.

22. The Facility has minimal livestock waste controls to control wastewater runoff from the open confinement areas. Respondent consulted with the National Resource Conservation Service ("NRCS") seeking recommendations on methods to limit the impact of livestock runoff. Pursuant to NRCS recommendations, Respondent has attempted to limit the impact by maintaining grass in the confinement areas and the construction of buffer strips.

These efforts, however, have not eliminated discharges from the facility. Runoff from the facility discharges to an unnamed tributary of Jenkins Creek.

23. Jenkins Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. § 122.2.

24. The flow of wastewater from Respondent's Facility to the tributary of Jenkins Creek and Jenkins Creek constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §1311 and 1342, and implementing regulations.

Findings of Violation

25. The facts stated in paragraphs 12 through 24 above are herein incorporated.

26. Respondent's Facility discharges wastewater into Jenkins Creek and its unnamed tributary. Respondent's discharges constitute unauthorized discharges of pollutants from a point source to waters of the United States. This, coupled with Respondent not having an NPDES permit has resulted in violations of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

Consent Agreement

The Complainant and Respondent hereby agree as follows:

27. Respondent admits the jurisdictional allegations of the Complaint.

28. Respondent neither admits nor denies the factual allegations set forth in the Complaint, which is incorporated herein by reference.

29. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Findings of Violation.

28. In settlement of this matter, Respondent consents to the issuance of the Order for Compliance on Consent. Respondent agrees that it will complete the compliance activities on or before the dates set forth within or established pursuant to the Order for Compliance on Consent.

30. Respondent agrees to maintain the NPDES permit issued by MDNR. In the event that Respondent fails to fulfill the requirements of the permit, the permit expires, or for any reason the permit is invalidated, EPA reserves its rights to take enforcement action under applicable federal, state, and local environmental statutes and regulations.

31. Respondent and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these actions.

32. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Order for Compliance on Consent.

33. Nothing contained in the Order for Compliance on Consent shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Agency Approvals: The EPA may approve, approve with modifications, or disapprove deliverables. If EPA disapproves a deliverable, Respondent shall have 30 days to modify and resubmit the deliverable. If EPA disapproves the resubmitted deliverable it may be deemed by EPA a violation of this Order and subject to penalties. Once approved, all submissions shall be fully incorporated into and made an enforceable part of this Compliance Order. Upon receipt of EPA's written approval or approval with modification, Respondent shall commence work and implement any approved plan in accordance with the schedule and provisions contained therein. Any EPA approved report, plan, specification, or schedule shall be deemed incorporated into this Compliance Order on Consent. Prior to this written approval, no plan, report, specifications or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding. Respondent may request and EPA may, in its sole discretion, grant extensions of time to resubmit deliverables.

Order for Compliance on Consent

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:

1. Within thirty days of effective date of this Compliance Order on Consent, Respondent shall submit an Interim Measures Plan to the EPA for review and approval. The Plan shall describe, in detail, actions that Respondent has taken or will take to reduce the discharge of runoff from the feedlot to waters of the United States. The interim controls shall remain in place and operated until Respondent completes construction of the feedlot runoff control structures necessary to comply with the Clean Water Act. The Interim Measures Plan shall include specific actions to immediately reduce the runoff of pollutants from the facility. The Plan shall also include a schedule for implementation of the interim measures. Upon EPA approval of the Interim Measures Plan, Respondent shall implement the Plan immediately.

2. Within ninety days of the effective date of this Compliance Order on Consent, Respondent shall submit to EPA for review and approval a report conducted by a licensed professional engineer (hereinafter referred to as the "Waste Management Plan") which evaluates the feedlot runoff handling needs of the Facility and proposes a design for a feedlot runoff handling system that will enable Respondent to operate in full compliance with the Clean Water

Act. At a minimum the following items, or their equivalent if an alternate method is available to achieve full compliance, shall be addressed in the Waste Management Plan:

a. A determination of the required storage capacity based on the amount of feedlot runoff to be controlled and the equipment necessary for proper disposal of wastewater.

b. All the elements of a Nutrient Management Plan, if necessary, to ensure that solid and liquid livestock wastes are timely removed from the facility and that the wastes are disposed of in a manner that does not result in a discharge of pollutants to waters of the United States.

c. A description of the procedures and types and capacities of equipment or structures to be used to properly handle solid and liquid wastes, including an evaluation of the Facility's ability to restore storage capacity, if necessary, following precipitation events.

d. Drawings and plans for proposed waste management improvements for the Facility.

e. A proposed schedule for expeditious construction of all necessary feedlot waste management improvements to the Facility.

f. An Operation and Maintenance Plan that includes the best management practices to be utilized at the site and a description of actions Respondent will take to monitor feedlot runoff collection and ensure the Facility remains in compliance with the Clean Water Act.

3. Within 90 days of the effective date of this Compliance Order on Consent Respondent shall initiate the application process with MDNR for an NPDES permit for the facility. In order to initiate the application process the Respondent shall submit an application for a construction permit to MDNR within 90 days of the effective date of this Compliance Order on Consent.

4. Upon approval by EPA of the Waste Management Plan and receipt of the state construction permit, Respondent shall commence construction of the required improvements in accordance with the schedule set forth in the approved Waste Management Plan.

5. Within 30 days of when the activities necessary to eliminate discharges of feedlot runoff are completed (i.e., construction completion), Respondent shall submit a Notice of Construction Completion to EPA and an NPDES operating permit application to MDNR. This Notice of Construction Completion shall be in writing, shall include as-built drawings of the constructed improvements, and signed by a licensed professional engineer.

6. Beginning 30 days after the effective date of this Compliance Order on Consent and continuing monthly on the seventh of each month until Respondent submits a Notice of Construction Completion to the EPA, Respondent shall submit written monthly progress reports

to the EPA that describe, in detail, activities that occurred at the facility during the reporting period, activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were/will be addressed.

7. Upon completion of construction and continuing until such time as Respondent is issued an NPDES Operating Permit for construction activities required pursuant to this Order for Compliance on Consent for the Facility, Respondent shall maintain, at a minimum, the following operational records: 1) if applicable, liquid levels of storage structures after every event with the potential to change the amount of liquid in the storage facility; 2) land application and/or waste transfer documents that include dates, locations where the waste was applied or the destination if waste is transferred to a third party, amounts applied or transferred, application rates, and name and address of recipients, and if transferred the documents shall include the most recent annual nutrient analysis for nitrogen and phosphorous; 3) any manure testing results; and 4) precipitation records. Respondent shall submit copies of these records to the EPA on a quarterly basis for the periods of January-March, April-June, July-September, and October-December. Records must be submitted on or before the 7th day of the month following the end of the period (October 7, January 7, April 7 and July 7). Upon issuance of the NPDES operating permit, Respondent shall maintain and submit records as required by the NPDES permit.

8. Upon issuance of an NPDES permit to Respondent by MDNR, Respondent shall fulfill the requirements established by the NPDES Permit.

Submissions

9. All documents required to be submitted to the EPA by this Order, shall be submitted by mail to:

Stephen Pollard
Water Enforcement Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, KS 66101

10. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

General Provisions

Effect of Compliance with the Terms of this Order for Compliance on Consent

11. 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 to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

12. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information


13. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to 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 and/or any other authority.


Severability

14. 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.

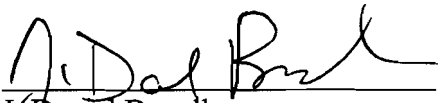
Effective Date

15. This Consent Agreement and Order for Compliance on Consent shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.


Leo J. Alderman, Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101


Date

In the Matter of Joplin Regional Stockyards, Inc.
Docket No. CWA-07-2005-0336.



J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

FOR RESPONDENT:

Joplin Regional Stockyards, Inc.:

Steve Owens
Name:

Vice-President
Title:

September 20, 2005
Date

CERTIFICATE OF SERVICE

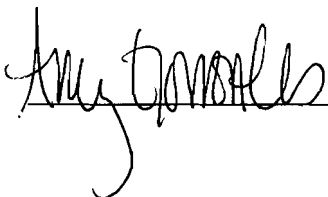
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region VII.

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 registered agent for Joplin Regional Stockyards, Inc.:

Randell D. Wallace
1845 S. National
Springfield, Missouri 65808-4288

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 Missouri:

Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102



9/28/05
Date _____