

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

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) Docket No. CWA-07-2010-0082

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HAMPTON FEEDLOT, INC.

)

Triplett, Missouri

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)

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Respondent

)

) FINDING OF VIOLATION

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) ORDER FOR COMPLIANCE

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)

Proceedings under

)

Section 309(a)(3)

)

of the Clean Water Act,

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33 U.S.C. § 1319(a)(3)

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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 Hampton Feedlot, Inc., who owns and operates an animal feeding operation with a design permitted capacity of 5,490 head of cattle near Triplett, 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, *inter alia*, 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 proposes 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 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)(3).
11. “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.”
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 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 NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an animal feeding operation ("Facility") that is located in the North ½ of the Southwest ¼ of Section 9, Township 54 North, Range 20 West, in Chariton County, Missouri.
15. On September 23, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility.
16. The Facility confines and feeds or maintains cattle 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 cattle while cattle are present.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. At the time of the EPA inspection, the Facility was confining approximately 2,313 head of feeder cattle. The number of feeder cattle confined and fed at the Facility is greater than 1000, 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).
20. Respondent is currently operating under an NPDES permit (MO-G010110) which was issued on July 27, 2007, and expires on February 23, 2011.
21. An unnamed tributary is located directly south of the facility and flows west along the south side of the facility for approximately one mile before reaching Salt Creek. Respondent's NPDES permit cites Salt Creek as receiving water for the Facility
22. Salt Creek and its tributary are waters of the United States, as defined under 40 C.F.R. Part 122.2.
23. Based on inspector observations and Respondent's records, the Facility does not have adequate manure storage available. Inspectors observed that Lagoon A was nearly full of solids. Inspectors also observed that the secondary containment area appeared to contain

approximately six feet of water. The permit requires this area to remain empty. Inspectors observed that the lower silo area located south of pen C24 does not have adequate runoff controls. Moreover, the inspectors noted that solids and process waste water had flowed out of this area towards the tributary of Salt Creek.

24. Based on the size of the Facility, the distance from the Facility to Salt Creek and its tributary, and the slope and condition of the land across that distance, wastewater containing pollutants from production areas at the Facility will continue to flow into the unnamed tributary of Salt Creek during precipitation events less than a 25 year, 24 hour storm event.

Findings of Violation

Count 1(Uncontrolled Runoff)

25. Respondent's NPDES permit requires that Respondent shall not allow a discharge to waters of the state except during storms that exceed a designed storm event.
26. During the EPA inspection referenced in paragraph 15 above, inspectors observed that the lower silo area is located within an area that lacks adequate runoff controls. Also, inspectors noted that the berm located at the southeast corner of pen C24 had eroded and would overtop during non-qualifying precipitation events. Unauthorized discharges from this area are a violation of the NPDES permit and the CWA.
27. The flow of wastewater from Respondent's Facility during non-qualifying rain events to Salt Creek and its tributaries constitute unauthorized discharges of pollutants from a point source to waters of the United States and, as such, are a violation of Section 301 of the CWA.

Count 2 (Storage Capacity)

28. Respondent's NPDES permit requires that the facility be maintained as described in the "Detailed Operation Description." This section of the permit details upper and Lower pumpdown levels and storage capacities of lagoons.
29. According to Respondent's operating records, Lagoon A exceeded its maximum operating level in January, February, March, and June of 2009. On the day of the inspection, inspectors observed that Lagoon A was full of manure solids and only two inches was available to store process waste water runoff. Lagoon A does not have the necessary storage capacity as required by the "Detailed Operation Description" in the permit.

30. Inspectors observed that the secondary containment lagoon appeared to contain over six feet of water. The permit requires that it is to be kept empty at all times.
31. According to Respondent's operating records, Lagoon B/C exceeded the maximum operating level required by the "Detailed Operation Description" in the NPDES permit during April and May 2009.
32. Respondent's failures 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.

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:

33. Respondent shall immediately comply with all terms of its NPDES permit and the CWA. Among other things, Respondent shall not locate silage in areas where runoff is not controlled and shall not confine or process cattle in areas (including the southeast corner of pen C24) unless adequate runoff controls are in place to prevent unauthorized discharges and water pollution. Respondent shall ensure that the permitted design storage capacity (ie. days of storage) is maintained in all waste retention structures on site, and that storage measurements are recorded and maintained in accordance with the NPDES permit for each structure. These specific items, along with other information required by Missouri regulations, shall be specifically addressed within the site's updated Nutrient Management Plan which shall be submitted to MDNR for review and approval prior to the renewal of the site's NPDES permit.
34. If Respondent is unable to prevent all unauthorized discharges from uncontrolled production areas at the Facility then Respondent shall remove cattle and manure from these areas, and properly dispose of the manure, within thirty (30) calendar days of receipt of this Order. Respondent shall cease the use of these areas until adequate runoff controls are constructed.
35. 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. This report shall include all actions taken or planned to be taken to remove sediment from Lagoon A to restore its storage capacity and to dewater the secondary containment lagoon.
36. On an ongoing basis, dewatering shall be initiated and conducted on all days suitable for land application of waste until the required lagoon storage capacities are again available. Respondent shall comply with all applicable requirements regarding the proper land

application of wastewater. Within (30) days of the effective date of this Order, Respondent shall submit all soil sampling results for the last two years for all fields that are receiving lagoon effluent and the latest Concentrated Animal Feeding Operation Annual Report (2009) to EPA.

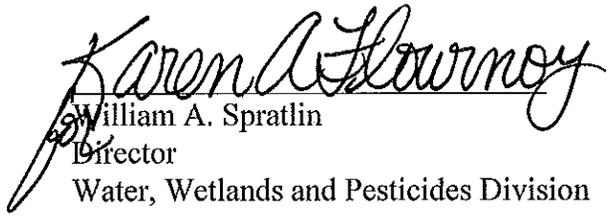
37. If Respondent intends to construct manure, litter, or process wastewater control structures or intends to repair structures where they are inadequate to control runoff, Respondent shall submit written monthly progress reports to EPA beginning within thirty (30) days of the effective date of this 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.
38. 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.
39. Commencing upon the effective date of this Order and continuing for one year, Respondent shall, on a quarterly basis, submit to EPA copies of all lagoon level, soil condition, precipitation, and land application monthly records that Respondent is required to keep in accordance with the Respondent's NPDES permit. 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

40. 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.
41. 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.
42. 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.

43. 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.
44. 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.
45. 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 Region 7
901 North 5th Street
Kansas City, Kansas 66101.
46. 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.
47. 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).
48. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 3-31-10


William A. Spratlin
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:

J. P. Hampton
23551 Hwy 11
Triplett, Missouri 65286.

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
Chief, Bureau of Water
Missouri Department of Natural Resources
1101 Riverside Drive
Jefferson City, Missouri 65101.

Date