

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

) Docket No. CWA-07-2006-0206

PRATT FEEDERS, LLC)
PRATT COUNTY, KANSAS)

) CONSENT AGREEMENT AND
) FINAL ORDER

Respondent,)

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

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Pratt Feeders, LLC (Respondent) have agreed to a settlement of the alleged violations set forth in Consent Agreement and Final Order. Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged violations of the National Pollutant Discharge Elimination System (NPDES) permit for Respondent's feedlot in Pratt County, Kansas.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

3. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged from a point source only in accordance with the terms of a NPDES permit issued pursuant to that section.

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Kansas Department of Health and Environment (KDHE) is the agency within the State of Kansas with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

6. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 402, 33 U.S.C. § 1342.

Factual Allegations

7. Respondent owns and operates an animal feeding operation ("Facility") that is located in the East ½ of Section 8, West ½ of Section 9, Northwest ¼ of Section 16 and the Northeast ¼ of Section 17, Township 27 South, Range 13 West, in Pratt County, Kansas.

8. Respondent is a limited liability company and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

9. On May 25, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility.

10. At the time of the inspection, the Facility was confining and feeding approximately 33,000 head of beef cattle. Respondent's Facility is a "concentrated animal feeding operation" and a "point source" as defined by the Clean Water Act and implementing regulations.

11. KDHE issued an NPDES permit to the Facility on December 12, 2003. The facility is permitted for a maximum of 40,000 head of beef cattle. The NPDES permit expires on December 11, 2008.

12. The EPA issued an Administrative Compliance Order on December 21, 1999, requiring Pratt Feeders to maintain adequate runoff storage capacity, record freeboard levels as required by the NPDES permit, and only land apply feedlot wastes on days deemed appropriate by the NPDES permit.

13. The NPDES permit requires that retention structures be maintained with an adequate storage capacity to ensure structural stability, and provide storage capacity for a two-week period plus precipitation induced flow from a 25-year, 24-hour storm event.

14. Respondent's NPDES permit requires that operational logs shall be maintained. Information recorded shall include but not be limited to the soil condition (frozen/thawed, etc.) for each day waste is applied.

Alleged Violations

15. The allegations set forth in paragraphs 1 through 14 are incorporated herein.

16. On certain dates between January 2004 and April 2005, the Respondent did not maintain adequate storage capacity for one or more retention structures, as required by the NPDES permit. This is a violation of the Facility's NPDES permit and a violation of Section 402 of the CWA and implementing regulations.

17. On certain dates between January 2004 and April 2005, operational logs do not specify the soil conditions for each day of land application. This is a violation of the Facility's NPDES permit and a violation of Section 402 of the CWA and implementing regulations.

CONSENT AGREEMENT

18. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

19. Respondent neither admits nor denies the factual allegations contained in this Consent Agreement and Final Order.

20. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Respondent and Complainant each agree to bear their own costs and attorney's fees.

22. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Supplemental Environmental Project (SEP)

23. Respondent shall expend a minimum of \$50,000 (Total SEP Expenditure) in approvable costs to enlarge a retention structure to be constructed at the Facility. The intent of this SEP is to increase the storage capacity of the retention structure to 200% of the capacity required by state and federal requirements. Approvable costs shall only include costs directly related to the construction of the SEP pursuant to the requirements of this Order.

24. Respondent shall complete construction of the retention structure in accordance with KDHE approved plans and certify its completion, including testing required by KDHE, on or before August 1, 2007. Beginning the effective date of this Order and continuing until EPA approves completion of the SEP, Respondent shall provide monthly status reports to EPA. Such monthly reports shall be submitted on or before the 15th day of each month. The monthly report shall provide the actual work performed during the reporting period along with any encountered problems and/or expected delays. Respondent shall provide notice of completion that includes a certification by a professional engineer, copies of as built plans, and itemized documentation of the costs incurred by Respondent to EPA upon completion of the SEP.

25. Upon receipt of the notice of completion, EPA will evaluate the cost documentation provided by Respondent and make a determination as to the sum of the approvable costs incurred by the Respondent. This determination shall be within the sole discretion of EPA. Upon satisfactory completion of the SEP, EPA will provide Respondent with written notification that the SEP has been completed.

Stipulated Penalties for Non-Performance of SEP

26. In the event Respondent fails to satisfactorily complete the SEP, the Respondent shall pay a stipulated penalty not to exceed \$8,325. Failure to complete the SEP by the deadline established above will result in a stipulated penalty of \$8,325. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$8,325 that shall be based upon a pro-rata share of the costs incurred to implement the SEP in relation to the portion of the penalty mitigated by the SEP (i.e., \$8,325 multiplied by the percentage of unexpended costs in relation to the Total SEP Expenditures).

27. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

28. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The payment shall be in accordance with the provisions of Paragraph 30.

Penalty

29. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty of Eight Thousand Three Hundred and Sixty-Four dollars (\$8,364). Mitigating factors include Respondent's agreement to perform the SEP described above.

30. Respondent shall submit payment of the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251.

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101;

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

31. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

32. Payment of the entire civil penalty and the completion of the SEP shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

33. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and the Facility's NPDES permit. The effect of the settlement described in paragraph 32 above is conditional upon the accuracy of this certification.

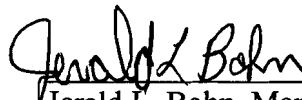
34. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

35. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

36. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

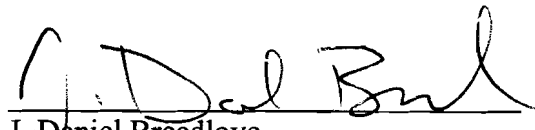
8-1-06
Date



Jerald L. Bohn, Manager
Pratt Feeders, LLC

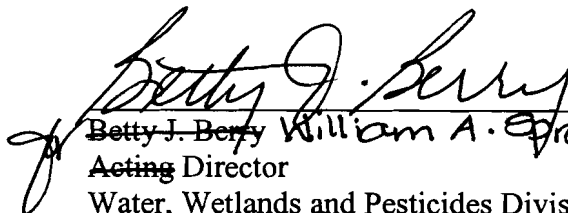
For the United States Environmental Protection Agency - Region VII

9/26/2004
Date



J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency Region VII

09/26/06
Date




Betty J. Berry William A. Sprattin
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: September 27, 2006

IN THE MATTER OF Pratt Feeders, LLC, Respondent
Docket No. CWA-07-2006-0206

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to:

J. Daniel Breedlove
Assistant Regional Counsel
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jerald L. Bohn, Manager
Pratt Feeders, LLC
P.O. Box 945
Pratt, Kansas 67124

9/27/06
Dated


Kathy Robinson
Hearing Clerk, Region 7