

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY R 28 AM 10:55
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)

) Docket No. CWA-07-2009-0038
)

ONKEN FEEDLOTS, L.L.P.)
CARROLL, IOWA)

) 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 7 (EPA) and Onken Feedlots, L.L.P. ("Respondent") have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order ("CA/FO"). 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").

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 CA/FO serves as notice that EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation ("CAFO") into a water of the United States in a manner that was not in

accordance with Respondent's NPDES permit. This CA/FO also 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 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. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

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 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.

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 CAFO in accordance with 40 C.F.R. § 122.23(b).

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 Iowa Department of Natural Resources ("IDNR") is the agency within the State of Iowa 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 IDNR. 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 of the Southeast ¼ of Section 21, Northwest ¼ of the Northeast ¼ Section 28 of Township 85 North, Range 34 West, in Carroll County, Iowa.

15. On May 29, 2008, 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's feeding areas.

18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. At the time of the EPA inspection, the Facility was confining approximately 2,200 head of beef cattle. The number of beef 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).

20. Respondent is currently operating under a conditional 2 year Alternative Technology NPDES permit which was issued on May 23, 2007, and expires on May 22, 2009.

21. Runoff from the north feedlot Vegetative Infiltration Basin ("VIB") was discharging under 140th Street and flowing south and east into a field which then flowed into an unnamed tributary to Buck Run.

22. The unnamed tributary and Buck Run are both waters of the United States, as defined in 40 C.F.R. Part 122.2.

23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste from the north feedlot VIB to Buck Run and its tributaries.

24. Based on the size of the Facility, the distance from the Facility to Buck Run, and the slope and condition of the land across that distance, wastewater containing pollutants from the north feedlot VIB will continue to flow into Buck Run during precipitation events less than a 25 year, 24 hour storm event.

Findings of Violation

Count 1

25. Respondent's NPDES permit requires Respondent to control livestock or related wastes in a manner capable of preventing water pollution. Sections 301 and 402 of the CWA prohibit discharges into "Waters of the United States" except pursuant to a NPDES permit.

26. During the EPA inspection referenced in Paragraph 15 above, inspectors observed discharges from the north feedlot VIB. Manure solids and process waste water effluent flowed into, through, and out of the north VIB during the inspection. The effluent then discharged under 140th street and flowed south and east into a field and then flowed into an unnamed tributary to Buck Run.

27. The flow of wastewater from Respondent's Facility during significant rain events to Buck Run and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Respondent's NPDES permit and a violation of Sections 301 and 402 of the CWA.

Count 2

28. Respondent's NPDES permit requires Respondent to establish a densely populated grass or other forage in the Vegetative Treatment Area ("VTA") channels and VIB. Additionally, the permit requires that vegetation must be established before introducing manure, settled open feedlot effluent, and process wastewater runoff into those areas.

29. During the EPA inspection referenced in Paragraph 15 above, inspectors observed no vegetation established in the VIB and the VTAs. Inspectors also observed the release of process wastewater into the VIB and south VTA.

30. Respondent's failure to establish densely populated grass or other forage in its VTAs and VIB, and the introduction of process wastewater into the VIB and VTAs before vegetation was established, is a violation of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA.

CONSENT AGREEMENT

31. Respondent admits the jurisdictional allegations in this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

32. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

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

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

35. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Penalty

36. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty of twenty two thousand, four hundred and ninety dollars (\$22,490).

37. Respondent shall submit payment of the penalty within thirty (30) days of the effective date of this CA/FO. 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 7
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

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

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and

Chris Muehlberger
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

38. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this CA/FO 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.

39. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

40. Respondent certifies by the signing of this CA/FO that Respondent's facility is scheduled to be in compliance with all requirements of Sections 301 and 402 of the CWA, and all regulations promulgated thereunder, pursuant to the terms of EPA's Administrative Compliance Order, docket number CWA-07-2008-0076.

41. 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.

42. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

43. 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:

3-5-09
Date

Onkon Foods LP
By Rick Onkon

For the United States Environmental Protection Agency - Region 7

3.17.09
Date

Chris Muehlberger
Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7

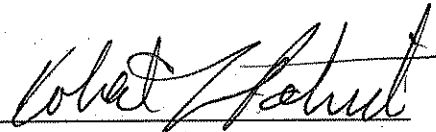
3-17-09
Date

Karen A. Flourney
for William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7

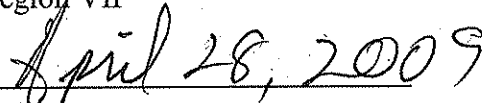
IN THE MATTER of Onken Feedlots, L.L.P.
Docket No. CWA-07-2009-0038

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

IN THE MATTER OF Onken Feedlots, LLP, Respondent
Docket No. CWA-07-2009-0038

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
Attorney for Complainant:

Chis Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Rick Onken
Onken Feedlots, L.L.P.
24568 140th Street
Carroll, Iowa 51401

Dated: 4/29/09


Kathy Robinson
Hearing Clerk, Region 7