

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 Kansas Department of Health and Environment (“KDHE”) is the agency within the State of Kansas authorized 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.

EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Allegations

14. Respondent owns and operates an animal feeding operation ("Facility") that is located in the Southwest ¼ of Section 26, Southeast ¼ of Section 27, Northern ½ of Section 34 and the Northwest ¼ of Section 35 of Township 17 South, Range 9 East, in Morris County, Kansas.

15. On April 23, 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 1000, 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 an NPDES permit (KS0091308) which was issued on September 6, 2007, and expires on September 5, 2012.

21. Runoff from the southwest corner of pen #207 located in the southwest portion of Respondent's feeding areas flows south approximately 1,000 feet before entering into Kahola Creek. Runoff from Pen #4 located in the northeast corner of Respondent's feeding areas flows directly into an unnamed tributary of Kahola Creek. From this point the unnamed tributary flows southeast approximately one mile at which point it combines with Kahola Creek.

22. Kahola Creek is a water of the United States, as defined under 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 pens #4 and #207 to Kahola Creek and its tributaries.

24. Between February 1, 2008, and May 31, 2008, there were at least 50 days that were suitable for land application of livestock waste from Respondent's retention structures.

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

Alleged Violations

Count 1

26. Respondent's NPDES permit requires Respondent to control livestock or related wastes in a manner capable of preventing water pollution.

27. During the EPA inspection referenced in paragraph 15 above, inspectors observed that Pen #207 did not contain controls for livestock waste.

28. Failure to control the flow of wastewater from Respondent's Facility during significant rain events to Kahola Creek and its tributaries is a violation of Respondent's permit and, as such, is a violation of Section 402 of the CWA.

Count 2

29. Section 301 of the CWA prohibits discharges into "Waters of the United States" except pursuant to a NPDES permit.

30. During the EPA inspection referenced in paragraph 15 above, inspectors observed an intermittent stream running through Pen #4 and that Pen #4 did not contain controls to prevent the flow of wastewater into the intermittent stream and Kahola Creek.

31. The flow of wastewater from Respondent's Facility during significant rain events to Kahola Creek and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States and, as such, is a violation of Section 301 of the CWA.

Count 3

32. Respondent's NPDES permit states that solids such as manure may be stockpiled temporarily (not to exceed six months), and stockpiles shall be located in areas not subject to uncontrolled runoff or leaching.

33. During the EPA inspection referenced in paragraph 15 above, inspectors observed that Respondent had placed a stock pile of manure located approximately 700 feet from Kahola Creek in an area that had no controls for runoff or leaching. The manure stock pile had been at this location since May 2007.

34. Respondent's failure to place the manure stockpile in an area not subject to uncontrolled runoff or leaching and within 700 feet of a stream is a violation of its NPDES Permit, and as such, is a violation of Section 402 of the CWA.

Count 4

35. Respondent's NPDES permit requires that dewatering of livestock waste retention structures shall be conducted on all days suitable for land application when available storage capacity is less than the required amounts specified in the permit.

36. A review of the Respondent's operating reports during the period between February 1, 2008 and May 31, 2008 indicate that Respondent did not dewater retention structures on days suitable for land application when Respondent's retention structures contained less than the required storage capacity.

37. Respondent's failure to dewater retention structures on days suitable for land application is a violation of its NPDES Permit, and as such, is a violation of Section 402 of the CWA.

CONSENT AGREEMENT

38. 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.

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

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

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

42. 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

43. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty of thirty thousand dollars (\$30,000).

44. 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

45. 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.

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

47. Respondent certifies by the signing of this CA/FO 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 46 above is conditional upon the accuracy of this certification.

48. 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.

49. 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.

50. 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:

2/21/09

Date



Matt Peterson
Hinchman Ranch

For the United States Environmental Protection Agency - Region 7

3.4.09

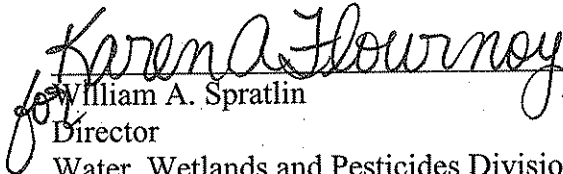
Date



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

3-5-09

Date

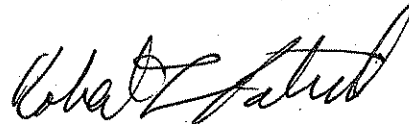


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7

IN THE MATTER of Matt Peterson d/b/a Hinchman Ranch
Docket No. CWA-07-2009-0033

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

April 24, 2009
Date

IN THE MATTER OF Matt Peterson d/b/a Hinchman Ranch, Respondent
Docket No. CWA-07-2009-0033

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:

Chris 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:

Matt Peterson
Hinchman Ranch
312 DD Avenue
Council Grove, Kansas 66846

Dated: 4/27/09



Kathy Robinson
Hearing Clerk, Region 7