

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

	)	
	)	
Bacon Maker, Inc.	)	Docket No. CWA-07-2015-0060
	)	
Armstrong, Iowa	)	
	)	
Respondent	)	FINDING OF VIOLATION
	)	ORDER FOR COMPLIANCE
	)	
	)	
Proceedings under	)	
Section 309(a)(3)	)	
of the Clean Water Act,	)	
33 U.S.C. §§ 1318(a) and 1319(a)(3)	)	
_____	)	

**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. Bacon Maker, Inc., (“Respondent” or “Bacon Maker”) operates an animal feeding operation that is located in Southeast ¼ of Section 23 and the Northeast ¼ of Section 26 of Township 99 North, Range 31 West, in Emmet County, Iowa and has a street address of 1895 570<sup>th</sup> Avenue, Armstrong, Iowa 50514.

**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 of pollutants 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, the 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. § 2.23(b)(2) as an animal feeding operation that is defined as a large or medium 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. “Medium CAFO” is defined, according to 40 C.F.R. § 122.23(b)(6), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves” and either of the following conditions are met:

- a) Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device; or
  - b) Pollutants are discharged directly into waters of the U.S. which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
13. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
  14. “Process wastewater” is defined by 40 C.F.R. § 122.23 as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”
  15. “Production Area” is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
  16. Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa authorized to administer the federal NPDES program. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

**Factual Background and Findings of Violation**

17. Respondent owns or operates an animal feeding operation (“Bacon Maker Facility”) that is located in Southeast ¼ of Section 23 and the Northeast ¼ of Section 26 of Township 99 North, Range 31 West, in Emmet County, Iowa and has a street address of 1895 570<sup>th</sup> Avenue, Armstrong, Iowa 50514. Bacon Maker’s production areas consist of a total of five swine finishing barns, two nursery buildings, an open-lot sick pen, and a monoslope confinement building (MCB) used to confine beef cattle. Three of the five swine finishing barns are located approximately 2,300 feet northwest of the MCB.
18. On or around June 17, 2014, EPA personnel conducted a compliance evaluation inspection of the Facility.
19. At the time of the EPA inspection, the Bacon Maker Facility was confining approximately 62 cattle in the open lot sick pen and 922 head of cattle in the MCB. The inspector observed and sampled pollutant discharges emanating from these confinement areas, accumulated manure areas and feedstock storage areas through a road culvert and into the tile-drainage system at the Bacon Maker Facility. The EPA has confirmed that the tile-drainage system conveys pollutant discharges directly to the East Fork of the Des Moines River. Discussions between Respondent and the EPA inspector during the inspection also documented that the Bacon Maker Facility was sufficiently dependent upon production areas operated by Tony L. Brown and Joshua A. Brown, doing business as Riverview Cattle to feed and maintain the cattle at the Bacon Maker Facility that the Bacon Maker and Riverview production areas were likely operating as a single large concentrated animal feeding operation.
20. Since the June 17, 2014 inspection, Respondent has provided information to the EPA that it has taken steps to independently feed and maintain cattle at the Bacon Maker Facility.
21. Neither crops, vegetation, forage growth, nor are post-harvest residues sustained over any portion of the Bacon Maker Facility’s confinement areas at times relevant to this Order.
22. The Bacon Maker Facility confines and feeds or maintains cattle and swine for a total of forty-five (45) days or more in any twelve month period relevant to this Order.
23. The Bacon Maker Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
24. The culverts and tile-drainage system observed at the Bacon Maker Facility facilitate pollutant discharges from the Bacon Maker Facility to the East Fork of the Des Moines

River. The culverts and field-tile drainage system are man-made ditches, flushing systems or similar man-made devices.

25. At times relevant to this Order, the number of beef cattle confined at the Bacon Maker Facility is between 300 and 999 head for 45 days or more during a twelve month period, and pollutant discharges flow through man-made ditches, flushing systems or similar man-made devices to the East Fork of the Des Moines River, therefore the Facility is a medium CAFO as that term is defined in 40 C.F.R. §122.23(b)(6) and as the term CAFO is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
26. East Fork of the Des Moines River and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.
27. Based on the number of cattle confined at the Bacon Maker Facility, the presence of the culverts and drainage tiles that facilitate pollutant discharges and the proximity of the Bacon Maker Facility to East Fork of the Des Moines River, process wastewater containing pollutants from production areas at the Bacon Maker Facility will continue to intermittently discharge into the East Fork of the Des Moines River and/or its tributaries as a result of significant precipitation events.
28. The intermittent but continuing flow of process wastewater from Respondent's Bacon Maker Facility to East Fork of the Des Moines River constitutes unauthorized discharges of pollutants from a point source to waters of the United States. These are violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and implementing regulations.

### **Order for Compliance**

Based on the Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

29. Respondent shall comply with the CWA.
30. Within one hundred and eighty (180) days of the effective date of this Order, Respondent shall reduce the number of cattle confined at the Bacon Maker Facility below the medium CAFO regulatory threshold of 300 head of beef cattle, unless the Bacon Maker Facility can be managed in a manner that prevents all pollutant discharges into waters of the United States through a man-made ditch, flushing system, or other similar man-made device or Respondent applies for a NPDES permit that authorizes pollutant discharges to waters of the United States.

31. If Respondent cannot cease all discharges from the Bacon Maker Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter and process wastewater from areas that cannot be controlled in a manner to prevent discharges.
32. Within Sixty (60) days of the Effective Date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken or will take to comply with the Clean Water Act and the terms of this Order.
33. Upon issuance of a NPDES Permit, Respondent shall comply with all terms contained therein.
34. If Respondent intends to construct runoff control structures to allow the confinement of cattle above regulatory thresholds then beginning within sixty (60) days of the Effective Date of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to the EPA, Respondent shall submit written monthly progress reports to the 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.
35. Upon completion of runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to the EPA within thirty (30) days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
36. On a quarterly basis for one year beginning three months from the Effective Date of this Order, Respondent shall generate and submit to the EPA copies of inventory records that document the number of cattle confined at the Bacon Maker Facility as well as the pen ID/numbers in which they are held, the inventory records shall include the location of any cattle owned, fed or maintained by Respondent anywhere other than at the Bacon Maker Facility. Quarterly reporting shall also include receipts associated with any outside services necessary to feed or maintain cattle at the Bacon Maker Facility.

## **General Provisions**

### **Opportunity to Confer**

37. This Order shall become effective 30 days after its receipt by Respondent. Prior to the Effective Date, Respondent has the opportunity to confer with and/or submit information to the EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. The EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.
38. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 44.

### **Effect of Order**

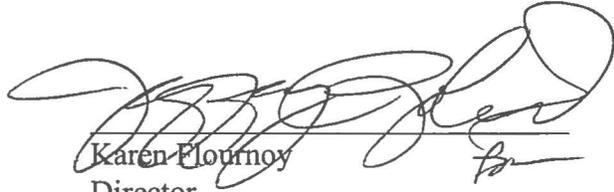
39. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
40. 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 seek additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
41. Nothing in this Order shall limit the 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.
42. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the 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.

43. 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.
44. All submissions to the EPA required by this Order shall be sent to:

Seth Draper  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.
45. 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. The 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 Clean Water Act appear in 40 C.F.R. § 2.302.
46. 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 Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
47. The Effective Date of this Order shall be 30 days following Respondent's receipt of the Order. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

Date 5-14-15



Karen Flounoy  
Director  
Water, Wetlands and Pesticides Division



J. Daniel Breedlove  
Senior Counsel

**CERTIFICATE OF SERVICE**

I certify that on the date noted 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 Docket 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 and small business assistance information, to the following address:

Gary L. Brown  
Bacon Maker, Inc.  
1895 570<sup>th</sup> Avenue  
Armstrong, IA 50514.

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 Iowa:

Mr. Ken Hessenius  
Field Office #3  
Iowa Department of Natural Resources  
1900 Grand Avenue  
Gateway North Mall, Suite E17  
Spencer, Iowa 51301.

Clarita A. Moreno

5/14/15

Date