

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
)	
DOUBLE V DAIRY, LLC)	
ROCK VALLEY, IOWA)	
)	
Respondent.)	
)	Docket No. CWA 07-2014-0049
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. Section)	
1319(g))	
)	
)	
)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Double V Dairy, Limited Liability Company (Respondent), have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. This action is simultaneously commenced and concluded pursuant to 40 C.F.R. Part 22, Sections 22.13(b) and 22.18(b)(2) (the 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. Respondent neither admits nor denies the factual allegations or the violations alleged in this Consent Agreement and Final Order.

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. The 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 navigable waters of the United States.

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*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to 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 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 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

6. Section 504(12) of the CWA, 33 U.S.C. § 1362(1), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 40 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.

8. “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.

9. “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.”

10. “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.

11. “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).

12. "Large CAFO" is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines as many as, or more than, "700 dairy cows, whether milked or dry."

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. The 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 authorized state NPDES programs for violations of the CWA.

15. 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 301 or 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Factual Allegations

16. At all relevant times, Respondent owned and operated a dairy that is located in the western ½ of Section 27 in Township 97 North, Range 46 West, in Sioux County, Iowa (the "Facility").

17. On March 18, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility. During the inspection, EPA's inspectors observed and sampled storm water runoff from the feedlot that was discharging into Rogg Creek and its tributaries. EPA inspectors observed that the storm water runoff contained manure and other pollutants. EPA issued an administrative compliance order on March 30, 2010, requiring Respondent to correct the CWA violations identified during the March 2010 inspection.

18. On March 27 and May 30, 2013, EPA personnel conducted additional inspections of the Facility. During the inspections they observed that conditions at the Facility had not been adequately corrected to prevent pollutant discharges to Rogg Creek and its tributaries.

19. The Facility confines and feeds or maintains dairy cattle for a total of forty-five (45) days or more in any twelve month period.

20. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.

21. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).

22. At all relevant times, the Facility was confining approximately 1200 head of dairy cattle.

23. The Facility is a CAFO as defined by 40 C.F.R. § 122.23(b)(2), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The number of dairy cattle confined and fed at the Facility is greater than 700, therefore, the Facility is a Large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).

25. During the inspections, EPA inspectors observed manure, litter, and process wastewater from the Facility flowing directly into Rogg Creek and its tributaries or, when pollutant discharges were not occurring, observed that conditions at the Facility continued to allow pollutant discharges into these streams.

26. Rogg Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2.

27. The Facility did not have adequate livestock waste control facilities to prevent the discharge of manure, litter, and process wastewater to Rogg Creek and its tributaries.

28. Respondent did not have a NPDES permit for the Facility.

Alleged Violations

29. Paragraphs 1-28 above are hereby incorporated by reference.

30. 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.

31. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Rogg Creek and its tributaries, the slope and condition of the land across that distance, and observed discharges, manure, litter and process wastewater discharged into Rogg Creek and its tributaries as a result of significant precipitation events.

32. The intermittent flow of process wastewater from Respondent's Facility to Rogg Creek and its tributaries as a result of significant precipitation events constituted unauthorized discharges of pollutants from a point source to waters of the United States. The unauthorized discharges are violations of Sections 301 of the Clean Water Act, 33 U.S.C. §1311, and implementing regulations.

CONSENT AGREEMENT

33. Solely for the purpose of this proceeding, and to fully resolve the EPA's allegations without the need for a trial, 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.

34. Respondent neither admits nor denies the factual allegations or the violations alleged in this Consent Agreement and Final Order.

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

36. Respondent and EPA shall each agree to bear their own costs and, if applicable, any attorney's fees.

37. 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.

38. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Seventy-Five Thousand Dollars (\$75,000).

39. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payments shall be made 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letters and the checks shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

J. Daniel Breedlove
Senior Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

40. 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.

41. The penalty payment made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

42. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States and Respondent's liability for civil penalties based on the Alleged Violations (consisting of Paragraphs 29 through 32 of this Consent Agreement) and facts alleged in this Consent Agreement and Final Order.

43. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.


44. 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.

45. 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.


46. 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.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

4-22-14
Date



Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division



J. Daniel Breedlove
Senior Counsel

RESPONDENT:
Double V Dairy, LLC

2-25-14
Date

Anden Van Beek
Anden Van Beek, Owner

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

4-23-14
Date

IN THE MATTER OF Double V Dairy, LLC, Respondent
Docket No. CWA-07-2014-0049

CERTIFICATE OF SERVICE

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

Copy emailed to Attorney for Complainant:

breedlove.dan@epa.gov

Copy by First Class Mail to Respondent:

Donald J. Nelson
Interstate Farms
6513 S. Jeffrey Ave.
Sioux Falls, South Dakota 57108

Dated: 4/23/14



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7