

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

BEFORE THE ADMINISTRATOR

Winifred Feed Lot, LLC)	Docket No. CWA 07-2014-0086
)	
)	
Frankfort, Kansas)	
)	
Respondent)	FINDINGS OF VIOLATION
)	ORDER FOR COMPLIANCE
)	
)	
Proceedings under)	
Sections 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. § 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. The Respondent, Winifred Feed Lot, LLC, (“Respondent”), owns and/or operates an animal feeding operation located in the Northeast ¼ of Section 26 in Township 3 South, Range 08 East, in Marshall County, Kansas. The operation is herein referred to as the Facility or Operation.

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 502(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. “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. Pollutant includes “process wastewater,” which includes any water which comes in contact with, among other things, manure, litter or feed.
7. “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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
8. “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.
9. “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)(4).
10. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines 1,000 or more cattle, other than mature dairy cows or veal calves.

11. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) 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.”
12. “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.
13. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must apply for a NPDES permit if the CAFO discharges.
14. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
15. The Kansas Department of Health and Environment (“KDHE”) is the agency within the state of Kansas authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

16. Respondent owns and/or operates an animal feeding operation located in the Northeast ¼ of Section 26 in Township 3 South, Range 08 East, in Marshall County, Kansas. The Facility consists of, among other things, a working pen, 28 open cattle confinement pens, a solids settling basin and an earthen storage lagoon. The facility also includes a feedstock storage area and other production areas.

17. On December 11, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. During the inspection, the inspectors identified that the feedstock storage area lacks runoff controls and process wastewater from the area flows into a cropped field which drains to Perkins Creek. EPA conducted runoff modeling and confirmed that process wastewater from the feedstock storage area flows through the field and discharges into Perkins Creek. Inspectors also identified that a portion of the confinement pens at the Facility flows to the roadside ditch west of 18th Road which discharges to Perkins Creek.
18. Following the inspection, the inspectors issued a Notice of Potential Violation (NOPV) of the CWA to Respondent for the uncontrolled feedstock storage area at the Facility. The inspectors also noted in the NOPV that Respondent failed to submit and implement a Nutrient Management Plan (NMP) as required by the Facility's NPDES permit.
19. Perkins Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2. Based on the Kansas 2012 303(d) list, Perkins Creek is impaired for phosphorus, total suspended solids, copper and impaired biology.
20. The Facility confines and feeds or maintains cattle, other than mature dairy cows or veal calves, for a total of forty-five (45) days or more in any twelve month period.
21. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.
22. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
23. Respondent's records indicate that the number of cattle confined at the Facility varied from 500 to 2,200 in 2011 through 2013.
24. At times pertinent to this Order, the number of cattle confined and fed at the Facility was 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) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
25. Respondent had a NPDES permit for the Facility that became effective September 19, 2007, and expired September 18, 2012. The NPDES permit contained a compliance schedule requiring Respondent to develop, submit for KDHE review and implement a NMP by February 27, 2009. Respondent never submitted a NMP as required by the NPDES permit. The failure to develop and implement a NMP was a violation of the NPDES permit and CWA Section 402, 33 U.S.C. § 1342. Respondent submitted an application for NPDES permit renewal on October 10, 2011, however, the NPDES permit has not been reissued because of continued failure by Respondent to

develop and implement a NMP. The Facility is currently operating without a NPDES permit.

26. Facility feedstock storage and confinement pen areas lack runoff controls necessary to contain precipitation-related runoff. The lack of adequate runoff controls has resulted in conditions in which Respondent discharges manure, litter and/or process wastewater to Perkins Creek and its tributaries, waters of the United States. Respondent does not have a NPDES permit as required by 40 C.F.R. § 122.23(d)(1) that authorizes the discharges. Respondent's discharges are a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

Order for Compliance

Based on the Findings of Violation set forth in paragraphs 16 through 26 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:

27. Respondent shall immediately implement remedial measures to permanently address all conditions at the Facility that result in unauthorized discharges. Specifically, Respondent shall design, construct, operate, and maintain the Facility in a manner so that the Facility does not discharge manure or process wastewater to a water of the United States.
28. Within forty-five (45) days of the effective date of this Order, Respondent shall provide EPA with a written description and supporting documentation of the activities and procedures implemented to ensure that the Facility does not discharge manure or process wastewater to a water of the United States.
29. If Respondent is unable to design, construct, operate, and maintain the Facility so the Facility does not discharge manure or process wastewater to a water of the United States, Respondent shall apply for a NPDES permit and submit all supporting documents, including a NMP, for the Facility to KDHE within forty-five (45) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the design, construction, operation, and maintenance of livestock waste controls.
30. If Respondent intends to apply for a NPDES permit and construct associated runoff controls then within thirty (30) 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 EPA, Respondent shall submit written monthly progress reports to 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.

31. Upon completion of any necessary control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

General Provisions

Opportunity to Confer

32. 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 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 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. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.
33. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 39.

Effect of Order

34. 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 provides the grounds for such review and is set forth at the following website <http://uscode.house.gov/download/pls/05C7.txt>.
35. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.

36. Nothing in this Order shall limit 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.
37. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.
38. 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.
39. All submissions to EPA required by this Order shall be sent to:

Stephen Pollard
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
(913) 551-7582.
40. 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 EPA to release the submitted information to the public without further notice. 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 CWA appear in 40 C.F.R. § 2.302.
41. Notice is hereby given that failure to comply with the terms of this Section 309(a) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Compliance Order, a

United States District Court may impose civil penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act and failed to comply with the terms of the Order. The court has the authority to impose separate civil penalties for violation of the Act and for violation of this Order.

42. The Effective Date of this Order shall be 30 days following receipt by Respondent. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

Date

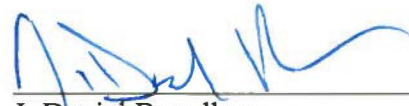
7-30-14



Karen A. Flourney

Director

Water, Wetlands and Pesticides Division



J. Daniel Breedlove

Senior Counsel

Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the signed original Findings of Violation and Order of Compliance with the Regional Hearing 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 to the following:

Mr. Steven Keating
Winifred Feed Lot, LLC
1731 18th Road
Frankfort, Kansas 66427

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 Kansas:

Michael B. Tate, PE, Director
Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367



07-31-14

Date