

Statutory and Regulatory Authority

3. Respondent is a “person” as that term is used by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. 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.
5. 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.
6. 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.”
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. Pollutant includes “process wastewater” which includes any water which comes in contact with, among other things, manure, litter or feed. *See* 40 C.F.R. § 122.23(b)(7).
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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
9. To implement Sections 301 and 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 an NPDES permit if the CAFO discharges.
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)(4).
12. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “82,000 laying hens, if the AFO uses other than a liquid manure handling system.
13. “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.”
14. “Production Area” means that part of an AFO that includes manure storage areas. 40 C.F.R. § 122.23(b)(8). “Manure storage area” includes but is not limited to manure stockpiles.
15. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
16. The Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the state of Nebraska authorized to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

17. Respondent owns and operates an egg layer operation that is located in the NE ¼ of Section 7 in Township 30 North, Range 03 West, in Knox County, Nebraska. The street address of the Facility is 54080 Highway 84 West, Bloomfield, Nebraska, 68718.
18. On or around September 22-23, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility and land application areas used to dispose of poultry manure generated at the Facility.
19. The Facility confines and feeds or maintains laying hens 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. Respondent confirmed that the Facility was confining approximately 3.1 million layer hens at the time of the inspection and that the Facility's capacity is 4,488,000 birds. The Facility generates approximately 155,000 tons of manure per year.
23. At all times pertinent to this order, the number of laying hens confined and fed at the Facility was greater than 82,000 and used something other than a liquid manure handling system. 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).
24. Respondent has submitted an NPDES permit application and Nutrient Management Plan for the Facility to NDEQ.
25. During the September 2010 EPA inspection, Respondent confirmed that manure is removed from the facility throughout the year, hauled by Respondent, and stockpiled in land application fields. Although the manure is sold to area farms, unless the purchaser has the equipment to spread the manure, Respondent applies the manure to application fields after crops are removed.
26. During the September 2010 EPA inspection, EPA inspectors observed two stockpiles (referred to as Section 22 stockpile and Section 27 stockpile) of poultry manure stockpiled by Respondent pursuant to an "Order for Poultry Waste" between Respondent and the land owner whereby Respondent agreed to deliver and spread 6,000 tons of poultry manure at a later date.
27. Pursuant to 40 C.F.R. § 122.23(b)(8), the poultry manure stockpiles are part of the production area of Respondent's CAFO. EPA inspectors observed that neither stockpile was covered and that both stockpiles lacked berms or other runoff controls to prevent the discharge of process waste water from the manure piles to nearby surface waters.
28. On September 23, 2010, EPA inspectors returned to the Section 27 stockpile following a precipitation event. The inspectors observed and sampled a process waste water discharge flowing from the Section 27 stockpile to a tributary of Little Bazile Creek. Sample analyses demonstrate that pollutants from the Section 27 stockpile discharged into the tributary of Little Bazile Creek.
29. Little Bazile Creek and its tributaries are waters of the United States.

30. The discharge of process waste water from the poultry manure stockpile to the tributary of Little Bazile Creek is a production area discharge from a CAFO. Respondent discharged pollutants from a point source to a water of the United States without an NPDES permit. As such, Respondent violated the Section 301 of the CWA, 33 U.S.C. §1311.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 17 through 30 above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA.

31. Respondent shall immediately comply with the CWA. Respondent shall cease all production area discharges at the Facility, including pollutant discharges associated with poultry manure stockpiled and applied by Respondent on land owned by others. Specifically, Respondent shall design, construct, operate, and maintain runoff controls at poultry manure stockpile locations that prevent the discharge of manure or process wastewater to waters of the United States.
32. 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 stockpiled poultry manure from the Facility does not discharge manure or process waste water to waters of the United States.
33. Within forty-five (45) days of the effective date of this order, Respondent shall provide NDEQ with all documentation, including information associated with available land application areas, required by NDEQ to process Respondent's March 25, 2009, NPDES permit application.
34. If Respondent intends to construct runoff controls for poultry manure stockpile locations, then beginning thirty (30) days after receipt 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 each stockpile location 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 any necessary control structures, Respondent shall submit a Notice of Construction Completion to EPA within thirty (30) days of completion of construction.

The notification shall be in writing and shall include as-built drawings of the constructed improvements or runoff controls.

Effect of Order

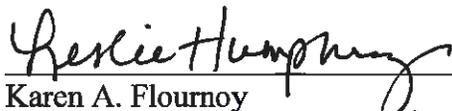
36. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.
37. Compliance with the terms of this Order shall not relieve Respondent of liability for, 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.
38. 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.
39. 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.
40. 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.
41. All submissions to the 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
901 North 5th Street
Kansas City, Kansas 66101.
42. 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 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.

43. 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 CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
44. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

0-15-2011
Date


for Karen A. Flournoy
Acting Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date note 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 Hearing Clerk, Region 7.

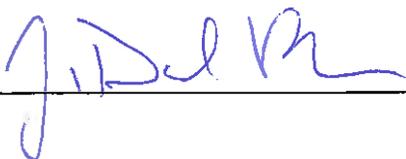
I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter to the following:

Timothy J. Bebee
M.G. Waldbaum Company
105 North Main Street
Wakefield, Nebraska 68784

David Morton
Operation Manager
Bloom-n-Egg Farm
P.O. Box 180
Bloomfield, Nebraska 68718

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:

Dennis Heitmann
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509



8/15/2011

Date