

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 Large CAFO in accordance with 40 C.F.R. § 122.23(b)(3).
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.” 40 C.F.R. § 122.23(b) does not distinguish between indoor and outdoor confinement for the purpose of counting the number animals stabled or confined at an animal feeding operation.
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 Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa 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

14. Respondent owns and operates an animal feeding operation (“Facility”) that is located in Section 3 of Township 95 North, Range 45 West, in Sioux County, Iowa. The Facility is a dual confinement operation. A dual confinement operation is one that uses enclosed structures known as total confinement buildings and open/outdoor pens to confine cattle.
15. On May 28, 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 4,614 head of beef cattle. Of these, 1114 cattle were in the open/outdoor pens and 3,500 feeder cattle were confined in the total confinement buildings. Respondent was stockpiling manure from the total confinement buildings outdoors and exposed to precipitation in an area that lacked runoff controls.
20. 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).
21. Respondent does not have an NPDES permit for the Facility.
22. Runoff from the northern portion of Respondent’s feeding areas flows south directly into an unnamed intermittent tributary. Runoff from the southern portion flows north approximately 450 yards before discharging into the same unnamed tributary. This intermittent tributary flows east approximately 1 mile before flowing into a relatively permanent unnamed tributary of the West Branch of the Floyd River. From this point pollutants from the Facility flows southeast for 1.5 miles until it flows into the West Branch of the Floyd River.
23. The West Branch of the Floyd River and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.

24. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the West Branch of the Floyd River and its tributaries. Feedlot discharges from the Facility contain ammonia, fecal coliform and other pollutants typically associated with feedlots.
25. Based on the size of the Facility, the distance from the Facility to West Branch of the Floyd River and its tributaries, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas and from stockpiled manure at the Facility will continue to discharge into the West Branch of the Floyd River and its tributaries as a result of significant precipitation events.
26. The ongoing flow of wastewater from Respondent's Facility to the West Branch of the Floyd River and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

Order for Compliance

Based on the Findings of Violation set forth above, and pursuant to Section 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:

27. Respondent shall immediately and properly dispose of manure stockpiles and all other manure accumulated outdoors at the Facility. If cattle cannot be confined at the Facility in a manner that prevents discharges to waters of the United States then Respondent shall also immediately reduce the number of cattle confined outdoors below 1,000 head.
28. Within fifteen (15) days of the effective date of this Order, Respondent shall submit an Interim Measures Plan to the EPA for review and approval. The Plan shall describe, in detail, actions to reduce the discharge of runoff from Respondent's feedlot to waters of the United States. The Plan shall also include a schedule for implementation of the interim measures. The interim controls shall remain in place and operated until Respondent's feedlot is operated in a manner that complies with the CWA. Upon EPA approval of the Interim Measures Plan, Respondent shall implement the Plan immediately.
29. Before December 31, 2008, Respondent shall cease all discharges or remove all cattle from areas within the Facility where runoff is not controlled in a manner to prevent discharges to waters of the United States. If cattle cannot be confined at the Facility in a manner that prevents discharges to waters of the United States then Respondent shall reduce the number of cattle confined at the Facility below regulatory thresholds before

December 31, 2008. Respondent shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents all discharges to waters of the United States. For the purposes of determining regulatory thresholds, Respondent shall count all cattle confined at the facility and not make a distinction between indoor and outdoor confinement.

30. Within forty-five (45) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken to comply with the CWA and the terms of this Order.
31. Respondent shall apply to IDNR for all applicable permits.
32. If Respondent intends to construct runoff control structures to allow the outdoor confinement of cattle above regulatory thresholds 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 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.
33. Upon completion of runoff 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.
34. On a quarterly basis for two (2) years, Respondent shall submit to EPA copies of inventory records that document the number of cattle confined at the Facility as well as the pen ID/numbers in which they are held and designate whether the pens are indoors or outdoors. Records will be submitted no later than the seventh day of the month in which they are due. The first quarterly report shall be submitted to EPA on October 7, 2008, and subsequent reports shall be submitted January 7, 2009, April 7, 2009, July 7, 2009, October 7, 2009, January 7, 2010, April 7, 2010 and July 7, 2010.

Effect of Order

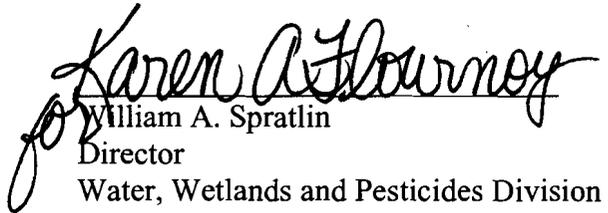
35. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

36. 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.
37. 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.
38. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, 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.
39. 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.
40. All submissions to EPA required by this Order shall be sent to:

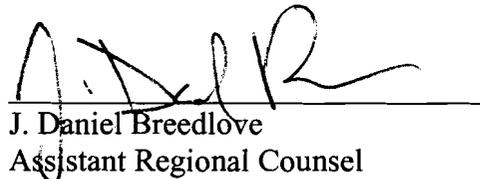
Stephen Pollard
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.
41. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted 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.

42. 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 \$32,500 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).
43. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 9/3/08


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date 8/27/08


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 and small business assistance information, to the following address:

Mr. Joel Schuiteman
Schuiteman Feedlot
3921 Hickory Avenue
Sioux Center, Iowa 51250

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 Nebraska:

Kenneth Hessenius
Field Office Supervisor
Field Office #3
Iowa Department of Natural Resources
1900 North Grand Avenue
Spencer, Iowa 51301.



9/9/09

Date