

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

HINCHMAN RANCH  
COUNCIL GROVE, KANSAS

Respondent

Proceedings under  
Section 309(a)(3)  
of the Clean Water Act,  
33 U.S.C. § 1319(a)(3)

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) Docket No. CWA- 07-2008-0068  
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) FINDING OF VIOLATION  
) ORDER FOR COMPLIANCE  
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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 is Hinchman Ranch who owns and operates an animal feeding operation permitted to confine 4,000 head of cattle near Council Grove, Kansas.

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. 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.
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.”
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 Kansas Department of Health and Environment (“KDHE”) is the agency within the State of Kansas authorized to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA

and KDHE. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

### **Factual Background**

14. Respondent owns and operates an animal feeding operation ("Facility") that is located in the Southwest  $\frac{1}{4}$  of Section 26, Southeast  $\frac{1}{4}$  of Section 27, Northern  $\frac{1}{2}$  of Section 34 and the Northwest  $\frac{1}{4}$  of Section 35 of Township 17 South, Range 9 East, in Morris County, Kansas.
15. On April 23, 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 2,200 head of beef cattle. 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).
20. Respondent is currently operating under an NPDES permit (KS0091308) which was issued on September 6, 2007 and expires on September 5, 2012.
21. Runoff from the southwest corner of pen #207 located in the southwest portion of Respondent's feeding areas flows south approximately 1000 feet before entering into Kahola Creek. Runoff from Pen #4 located in the northeast corner of Respondent's feeding areas flows directly into an unnamed tributary of Kahola Creek. From this point the unnamed tributary flows southeast approximately one mile at which point it combines with Kahola Creek.
22. Kahola Creek is a water of the United States, as defined under 40 C.F.R. Part 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the

discharge of animal waste from pens #4 and #207 to Kahola Creek and its tributaries.

24. Between February 1, 2008 and May 31, 2008, there were at least 50 days that were suitable for land application of livestock waste from Respondent's retention structures.
25. Based on the size of the Facility, the distance from the Facility to Kahola Creek, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility will continue to flow into Kahola Creek during precipitation events less than a 25 year, 24 hour storm event.

### **Findings of Violation**

#### **Count 1**

26. Respondent's NPDES permit requires Respondent to control livestock or related wastes in a manner capable of preventing water pollution.
27. During the EPA inspection referenced in paragraph 15 above, inspectors observed that Pen #207 did not contain controls for livestock waste.
28. Failure to control the flow of wastewater from Respondent's Facility during significant rain events to Kahola Creek and its tributaries is a violation of Respondent's permit and, as such, is a violation of Section 402 of the CWA.

#### **Count 2**

29. Section 301 of the CWA prohibits discharges into "Waters of the United States" except pursuant to a NPDES permit.
30. During the EPA inspection referenced in paragraph 15 above, inspectors observed an intermittent stream running through Pen #4 and that Pen #4 did not contain controls to prevent the flow of wastewater into the intermittent stream and Kahola Creek.
31. The flow of wastewater from Respondent's Facility during significant rain events to Kahola Creek and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States and, as such, is a violation of Section 301 of the CWA.

#### **Count 3**

32. Respondent's NPDES permit states that solids such as manure may be stockpiled

temporarily (not to exceed six months), and stockpiles shall be located in areas not subject to uncontrolled runoff or leaching.

33. During the EPA inspection referenced in paragraph 15 above, inspectors observed that Respondent had placed a stock pile of manure located approximately 700 feet from Kahola Creek in an area that had no controls for runoff or leaching. The manure stock pile had been at this location since May 2007.
34. Respondent's failure to place the manure stockpile in an area not subject to uncontrolled runoff or leaching and within 700 feet of a stream is a violation of its NPDES Permit, and as such, is a violation of Section 402 of the CWA.

#### **Count 4**

35. Respondent's NPDES permit requires that dewatering of livestock waste retention structures shall be conducted on all days suitable for land application when available storage capacity is less than the required amounts specified in the permit.
36. A review of the Respondent's operating reports during the period between February 1, 2008 and May 31, 2008 indicate that Respondent did not dewater retention structures on days suitable for land application when Respondent's retention structures contained less than the required storage capacity.
37. Respondent's failure to dewater retention structures on days suitable for land application is a violation of its NPDES Permit, and as such, is a violation of Section 402 of the CWA.

#### **Order For Compliance**

Based on the Findings of Violation set forth 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:

38. Respondents shall immediately comply with its NPDES permit and the CWA.
39. If cattle and manure cannot be confined in pens #207 and #4 in a manner that prevents discharges to waters of the United States, then Respondent shall remove cattle and manure in these pens, and properly dispose of the manure, within 30 calendar days of receipt of this Order.
40. Respondent shall immediately remove all stockpiled manure from areas where runoff and leaching are not collected or retained by permitted water pollution control facilities. Any

future temporary stockpiles (not to exceed six months) shall be located in areas not subject to uncontrolled runoff in accordance with Respondent's NPDES permit.

41. On an ongoing basis, dewatering shall be initiated and conducted on all days suitable for land application of waste until the required storage capacities for the Southeast and East Storage structures are again available. Respondent shall comply with all applicable requirements regarding the proper land application of wastewater.
42. Commencing upon the effective date of this Order and continuing for two years, Respondent shall on a quarterly basis submit to EPA copies of all lagoon level, soil condition, precipitation, and land application monthly records that Respondent is required to keep in accordance with the Respondent's NPDES permit. Respondent shall submit copies of these records to EPA on a quarterly basis for the periods of July-September, October-December, January-March, and April-June. Records must be submitted on or before the seventh day of the month following the end of the period (October 7, January 7, April 7 and July 7).

#### **Effect of Order**

43. 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.
44. 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.
45. 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.
46. 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.
47. 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.

48. 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 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

49. 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. 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.
50. 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).
51. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date

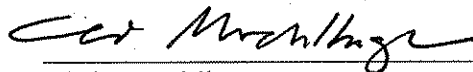
8/26/08



William A. Spratlin

Director

Water, Wetlands and Pesticides Division



Chris Muehlberger

Assistant Regional Counsel