

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

BEFORE THE ADMINISTRATOR

Prairieland Dairy LLC)
Firth, Nebraska) Docket No. CWA-07-2015-0058
Respondent)
)
) FINDING OF VIOLATION
) ORDER FOR COMPLIANCE
Proceedings under Section 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. Prairieland Dairy LLC (“Respondent”) operates an animal feeding operation (“Facility”) that is located in the SE ¼ of Section 20 of Township 7 North and the NE ¼ of Section 29, Township 8 North Range 8 East, in Lancaster County, Nebraska, and has a street address of 13000 Pella Road, Firth, Nebraska. 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 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, the 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 or medium CAFO in accordance with 40 C.F.R. § 122.23(b).
11. “Large CAFO” is defined, according to 40 C.F.R. § 122.23(b)(4), as an animal feeding operation that stables or confines 700 or more mature dairy cows, whether milked or dry.
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. “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” 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.
15. Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the state of Nebraska authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

16. Respondent owns and/or operates an animal feeding operation (“Facility”) that is located in the SE ¼ of Section 20 of Township 7 North, Range 8 East and the NE ¼ of Section 29, Township 8 North, Range 8 East, in Lancaster County, Nebraska. The Facility consists of two interrelated and connected production areas: the North Milking Area and the Dry Cow/Heifer Area. The North Milking Area consists of, among other things, two freestall barns, a dairy parlor, a connecting cattle walkway, a holding pen, temporary lot silage storage areas, feedstock storage areas, a manure/sand separator shed, sand lanes, one open manure/compost storage area, 2 solids settling basins, and two lagoons. The Dry Cow/Heifer Area consists of, among other things, 2 mono-sloped buildings with partially covered open pens and a concrete apron for heifers, a freestall barn for dry cows that is also used as a maternity area, an open lot, and approximately 200 calf huts.
17. On or around July 24, 2014, EPA personnel conducted a compliance evaluation inspection of the Facility. During the inspection, the inspector identified that the feedstock storage area lacked runoff controls and process wastewater from the area flows

northeast through a vegetative filter strip and into a northern unnamed tributary to the North Fork of Big Nemaha River. The northern unnamed tributary flows east approximately eight tenths (0.8) of a mile before entering the North Fork of Big Nemaha River. Also during the inspection, the inspector identified areas of the Dry Cow/Heifer Area that lacked adequate runoff controls. The areas lacking adequate runoff controls included the concrete apron and partially exposed heifer pens, the open lot, and the calf hut area. Process wastewater from these areas flows approximately 100 feet southeast to a road culvert that flows east under 134th Street where it is discharged into a southern unnamed tributary to the North Fork of Big Nemaha River. The southern unnamed tributary to the North Fork of Big Nemaha River flows north approximately 0.2 mile before converging with the northern unnamed tributary to the North Fork of Big Nemaha River. EPA conducted runoff modeling and confirmed that process wastewater from the feedstock storage area and the uncontrolled areas of the Dry Cow/Heifer Area discharge into the North Fork of Big Nemaha River and its tributaries.

18. The North Fork of Big Nemaha River and its tributaries are waters of the United States, as defined in 40 C.F.R. Part 122.2. Based on the Nebraska 2008 303(d) list, downstream portions of the North Fork of Big Nemaha Creek are impaired for fecal coliform and Escherichia coliform (E.coli). At the time of the inspection, the inspector documented pools of water in the stream channel of the northern unnamed tributary to the North Fork of Big Nemaha River. Runoff modelling confirms that process wastewater from the Facility discharges into and through these tributaries and into the North Fork of the Big Nemaha River. The North Fork of Big Nemaha River is a perennial stream.
19. The Facility confines and feeds or maintains mature dairy cattle, milked or dry, for a total of forty-five (45) days or more in any twelve month period.
20. Crops, vegetation, forage growth, or post-harvest residues were not sustained over any portion of the Facility's confinement areas at times relevant to this Order.
21. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
22. Respondent's records indicate that the number of mature dairy cattle confined and fed at the Facility averaged 1,563 during the period of July 2012 through May 2013 and 1,505 during the period of July 2013 through June 2014.
23. At all times relevant to this Order, the number of mature dairy cattle confined and fed at the Facility was greater than 700. 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. The NDEQ issued a Phased Construction and Operating Permit on March 9, 2011 for production areas where adequate controls had been constructed but restricted operations where controls were to be constructed as part of a second construction phase. Phase II runoff controls have not been constructed. The NDEQ issued NPDES General Permit #NEG015000 which became effective on April 1, 2013 and will expire on March 31, 2018.
25. The Facility feedstock storage and the areas of the Dry Cow/Heifer Area lack adequate 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 the North Fork of Big Nemaha Creek and its tributaries, waters of the United States. Respondent's discharges are a violation of its NPDES permit and 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 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:

26. 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 unless authorized by the NPDES permit.
27. Respondent shall comply with all terms contained within Prairieland Dairy's NPDES Permit, including terms related to the design, construction, operation, and maintenance of livestock waste controls.
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 or to be implemented to ensure that the Facility does not discharge manure or process wastewater to a water of the United States unless authorized by the NPDES permit.
29. If Respondent intends to construct additional runoff controls then within forty-five (45) 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.

30. 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.

General Provisions

Opportunity to Confer

31. This Order shall become effective thirty (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.
32. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 38.

Effect of Order

33. 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, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
34. 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.

35. 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.
36. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the 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.
37. 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.
38. All submissions to the EPA required by this Order shall be sent to:

Lantz Tipton
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
39. 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. The 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 Clean Water Act appear in 40 C.F.R. § 2.302.
40. 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 Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

41. The Effective Date of this Order shall be thirty (30) days following Respondent's receipt of the Order. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

Date

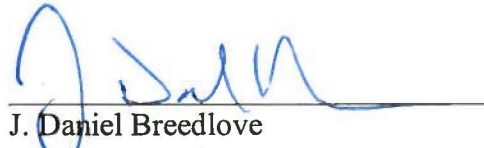
5/29/15



Karen Flournoy

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 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. Clifford P. Obbink, Registered Agent
Prairieland Dairy, LLC.
13000 Pella Road
Firth, Nebraska 68358


and

Mr. Dan Rice
Prairieland Dairy, LLC
13000 Pella Road
Firth, Nebraska 68358

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:

Mr. Blake Onken
Nebraska Department of Environmental Quality
Suite 400, The Atrium
1200 N Street, P.O. Box 98922
Lincoln, Nebraska 68509





Date