

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

UNITED STATES
 ENVIRONMENTAL PROTECTION
 AGENCY-REGION 7
 2013 AUG -7 AM 10:45

BEFORE THE ADMINISTRATOR

Chad Ragsdale)	Docket No. CWA 07-2013-0053
d/b/a Chad Ragsdale Poultry)	
)	
Tipton, Missouri)	
)	
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, Chad Ragsdale, doing business as Chad Ragsdale Poultry, (“Respondent”), owns and/or operates an animal feeding operation located in the NW ¼ of the SE ¼ of Section 27 in Township 45 North, Range 17 West, in Moniteau County, Missouri. The street address of the feeding operation is 30638 Bahner Quarry Road, Tipton, Missouri 65081. 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 more than “125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system.”
11. 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 an NPDES permit if the CAFO discharges.
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(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.”
14. The Missouri Department of Natural Resources (“MDNR”) is the agency within the state of Missouri 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

15. Respondent owns and operates a broiler chicken operation (“Facility”) that is located in the NW ¼ of the SE ¼ of Section 27 in Township 45 North, Range 17 West, in Moniteau County, Missouri, commonly known as Chad Ragsdale Poultry with the street address 30638 Bahner Quarry Road, Tipton, Missouri.
16. On March 13, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. EPA inspectors observed manure/litter stockpiles and a composting area located on the western portion of the facility behind barn #3. EPA inspectors observed manure, litter and process wastewater flowing north from the manure/litter stockpiles and composting area, around a field terrace and approximately 40 yards toward an unnamed tributary of Willow Fork Creek. Inspectors also observed process wastewater flow approximately 120 yards northeast where the wastewater pooled behind a field terrace at that time. Inspectors also observed a third process wastewater flow path from the stockpiles flowing south along the access road through a grassed area and into a wooded area toward Willow Fork Creek. EPA inspectors observed that these areas lack adequate runoff controls.
17. On May 20, 2013, EPA personnel returned to the Facility during a precipitation event to further evaluate the Facility’s compliance with the CWA. Inspectors observed that the Respondent had removed the manure and litter piles observed by EPA on March 13, 2013 but that residues from the stockpiles remained. Runoff of manure, litter and process wastewater from the stockpiling and composting area was flowing north and pooled behind an earthen berm in the north pasture. The berm had been constructed by the Respondent after the March 13, 2013, inspection. Samples were obtained from the pooling manure, litter and process wastewater. Sample results confirmed that pollutants were present in the runoff from the stockpiling area. Furthermore, inspector observations and sampling confirmed that during some precipitation events pollutants from this area discharged to the tributary to Willow Fork Creek via the flow path observed on

March 13, 2013, and would continue to discharge but for the construction of the earthen berm. Runoff of manure, litter and process wastewater from the stockpiling and composting area was also flowing northeast approximately 120 yards where it was pooled behind a field terrace.

18. During the May 20, 2013 inspection, a discharge was observed by EPA personnel on the southwest corner of the facility. Manure, litter and process wastewater was observed flowing south from the stockpiling area along the access road and into a grassed area. From there, runoff was observed flowing through a wooded area for approximately 225 yards before discharging into Willow Fork Creek. Samples were collected along the discharge path at the facility property line, the point of discharge into the Willow Fork Creek, as well as upstream and downstream of the discharge. Sample results confirm that pollutants from the facility discharged into the Willow Fork Creek.
19. Willow Fork Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2. Willow Fork Creek and its tributary are on the MDNR 2012 303(d) list for aquatic life impairments due to low dissolved oxygen.
20. The Facility confines and feeds or maintains chickens other than laying hens 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. The Facility was confining approximately 144,000 broiler chickens at the time of the March 13, 2013 inspection and a similar number of animals were confined at the Facility on May 20, 2013.
24. At all times pertinent to this Order, the number of chickens confined and fed at the Facility was greater than 125,000. 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. The design, construction, operation, and/or maintenance of Respondent's facility resulted in the presence of chicken manure in areas exposed to precipitation, which lacked adequate runoff controls, lacked impervious surfaces to allow adequate cleaning, and drainage features were present that facilitate the discharge of process wastewater into Willow Fork Creek and its tributaries.

26. Respondent had an NPDES permit for the Facility that expired on February 23, 2013. Respondent did not renew the NPDES permit but instead operates under a state issued no-discharge permit.
27. The presence of chicken litter manure in areas exposed to precipitation, which lacked runoff controls to prevent the discharge of manure, litter and process waste water and the presence of drainage features that facilitate the discharge into Willow Fork Creek and its tributaries have resulted in conditions in which Respondent discharges manure, litter and/or process wastewater to a water of the United States. Respondent does not have an NPDES permit as required by 40 C.F.R. § 122.23(d)(1). Respondent's discharges are a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 15 through 27 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:

28. 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.
29. Within thirty (30) 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.
30. If Respondent is unable to design, construct, operate, and maintain the Facility so the Facility does not discharge manure or process waste water to a water of the United States, Respondent shall apply for an NPDES permit for the Facility within thirty (30) 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.
31. If Respondent intends to apply for an 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.

32. 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

33. 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.
34. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 40.


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. 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.
36. 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.

37. 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.
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 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.
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:

Angela D. DeAngelo
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.
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 \$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).

8-6-13
Date


Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Senior Counsel

CERTIFICATE OF SERVICE

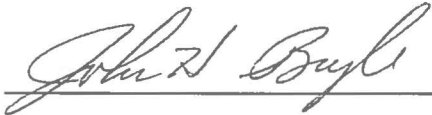
I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 to the following:

Chad Ragsdale
d/b/a Chad Ragsdale Poultry
30638 Bahner Quarry Road
Tipton, Missouri 65081.

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. Paul Dickerson
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102.



08-07-13
Date