



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-W-NP

MAR 28 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott and Jennifer Schall
P.O. Box 172
Arlee, MT 59821

Re: Findings of Violation and Order for
Compliance: §§ 308(a) and 309(a) of
the Clean Water Act

Dear Mr. and Mrs. Schall:

Enclosed is a United States Environmental Protection Agency (EPA) Region 8 Findings of Violation and Order for Compliance (Order) issued to you for alleged violations of the Clean Water Act (Act), which EPA issued pursuant to the Act. The authority for EPA to issue this Order is provided to EPA under § 309(a)(3) of the Act, 33 U.S.C. §1319(a)(3).

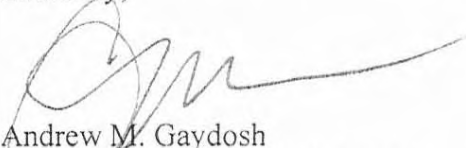
Section 309 of the Act provides a variety of possible enforcement actions, including civil, criminal, or administrative actions. (See 33 U.S.C. §1319, subsections (b), (c), (d), and (g).) Please be advised that the issuance of this Order does not preclude civil or criminal U.S. District Court action or EPA administrative penalty proceedings for the violations cited in the Order. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet. The SBREFA sheet notifies small entities of their right to comment on regulatory enforcement activities and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or a determination by EPA that your cattle feeding operation is a small entity as defined by SBREFA.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the City's compliance with the Act, please contact David Rise, Montana Operations

Office, at (406) 457-5012, or ask your attorney to contact Marc Weiner, Enforcement Attorney, at (303) 312-6913.

Sincerely,



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

SBREFA information sheet
Order

cc: E.T. Moran, Chairman
Confederated Salish & Kootenai Tribes
Mike Durglo, Environmental Division Manager, Confederated Salish & Kootenai Tribes

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

| | | |
|----------------------------------|---|---------------------------------------|
| IN THE MATTER OF: |) | FINDINGS OF VIOLATION |
| |) | AND |
| Scott and Jennifer Schall |) | ORDER FOR COMPLIANCE |
| PO Box 172 |) | |
| Arlee MT 59821 |) | Proceeding under §§ 308(a) and 309(a) |
| Respondents |) | Clean Water Act, 33 U.S.C. |
| |) | §§ 1318(a) and 1319(a) |
| |) | |
| |) | DOCKET NO. CWA-08-2011-0009 |

I. Preliminary Statement

1. This Administrative Order for Compliance (Order) is issued pursuant to § 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by any person found to be in violation of §§ 301 or 308 of the Act, among others, or in violations of any permit condition or limitation implementing § 402 of the Act. This order is also issued pursuant to § 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require submission of information to determine compliance with the Act. These authorities have been delegated to the Regional Administrator of EPA Region 8 and redelegated to the undersigned official.
2. Respondents Scott and Jennifer Schall (Respondents) are individuals that own and/or operate a cattle feeding operation in Arlee, Lake County, Montana.
3. Respondents each are a "person" as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

4. Respondents own and/or operate a “concentrated animal feeding operation” (CAFO) as defined in 40 C.F.R. § 122.23(b)(2) located at 34998 Finley Creek Road, Arlee, MT (facility).
5. The facility is bisected by Finley Creek, which is a tributary to the Jocko River, which is a tributary to the Flathead River.

II. Statutory and Regulatory Background

6. Section 301 of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.
7. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA to permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
8. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
9. “Pollutant” is defined by § 502(6) of the Act, 33 U.S.C. § 1362(6), to include, among other things, biological material and agricultural waste discharged into water.
10. “Point source” is defined by § 502(14) of the Act, 33 U.S.C. § 1362(14), to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
11. To implement § 402 of the Act, EPA promulgated regulations, codified at 40 C.F.R. part 122. According to 40 C.F.R. § 122.23(d), the owner or operator of a CAFO must seek coverage

under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, or maintained such that a discharge will occur.

12. “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 12-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 of facility.

13. “Concentrated animal feeding operation” or “CAFO” is defined in 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or a Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).

14. “Medium CAFO” is defined at 40 C.F.R. § 122.23(b)(6) to include an animal feeding operation that stables or confines 300 to 999 cattle other than mature dairy cows or veal calves and where either pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

15. “Waters of the United States” are defined at 40 C.F.R. § 122.2 to include, among other things, interstate waters and tributaries thereof.

16. Finley Creek, the Jocko River and Flathead River are waters of the United States within the meaning of 40 C.F.R. § 122.2 and, therefore, navigable waters within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).

17. The facility is a “point source” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).
18. Process wastewater, manure, and litter are each a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).
19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.
20. The term “discharge” as well as the term “discharge of a pollutant,” are defined in § 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 to include any addition of any pollutant to navigable waters from any point source.
21. Under 40 C.F.R. § 122.21(a), any person who discharges must submit a complete application for an NPDES permit to the Director in accordance with this section.

III. Findings of Violation

22. On March 24, 2010, an EPA inspector conducted an inspection of Respondents’ facility located at 34998 Finley Creek Road, Arlee, Montana and observed the following:
 - a. Respondents had cattle confined in pens along Finley Creek, which originates outside of the facility and passes over, across or through the facility.
 - b. Cattle in the pens had direct contact with the water and were standing in the water of Finley Creek.
 - c. The pens consist of open dirt lots, sloping down to Finley Creek.
 - d. Manure was present throughout the pens, including along Finley Creek.
23. The facility confines and feeds or maintains beef cattle for a total of 45 days or more in any 12-month period.

24. Crops, vegetation, forage growth or post harvest residues are not sustained in the normal growing season over any portion of the facility's feeding areas.

25. The facility was confining and feeding approximately 500 head of beef cattle at the time of the EPA inspection. The facility has a capacity of 500 head of beef cattle and confines and feeds approximately 500 head of beef cattle for approximately 5½ months per year.

26. Because the number of beef cattle confined at the facility is between 300 and 999 head of cattle other than mature dairy cows or veal calves, and there are pollutants discharging directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the facility, the facility is a CAFO as defined in 40 C.F.R § 122.23(b)(2) and § 502(14) of the Act and a Medium CAFO as defined in 40 C.F.R. §122.23(b)(6).

27. Respondents have not applied for or received coverage under an NPDES § 402 permit as required by 40 C.F.R. § 122.23.

28. Respondents have discharged pollutants from the facility to waters of the United States without an NPDES permit, in violation of § 310(a) of the Act, 33 U.S.C. § 1311(a).

IV. Order

Based on the foregoing Findings of Violation, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, Region 8, it is hereby ORDERED as follows:

1. Respondents shall immediately cease and desist discharging pollutants into waters of the United States unless such discharges are in accordance with a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.
2. Within ten (10) calendar days of receipt of this Order, Respondents shall submit to EPA written notice of its intent to comply with the requirements of this Order.
3. Respondents shall immediately conduct daily visual monitoring of all potential sources of discharges containing manure and/or waste feed to waters of the United States from the facility.
4. Respondents shall immediately develop and maintain a written monitoring log containing the following information for each area monitored as required by the preceding paragraph: the date and time of the visual observation, an indication of whether or not a discharge was observed, and the initials of the person making the observation. Respondents shall maintain the monitoring records at the facility for at least three (3) years after the date of this Order and make them available for inspection or copying upon request by any authorized representatives of EPA.
5. Respondents shall immediately conduct daily monitoring of precipitation at the facility using a rain gauge. Respondents shall record and maintain records of precipitation amounts with the monitoring records required by this Order.
6. For each observed discharge of any agricultural waste or other pollutant(s) from the facility that may enter any water of the United States, Respondents shall:
 - a. Within two (2) hours of the discharge, sample the discharge in accordance with the methods specified in 40 C.F.R. part 136, and submit the sample to laboratory to be analyzed in accordance with the sample holding times and methods of analysis specified in 40 C.F.R. part 136 for fecal, 5-day Biochemical Oxygen Demand (BOD₅), Ammonia, Nitrate-Nitrite, and Total Suspended Solids.
 - b. Submit to EPA within fifteen (15) calendar days of discharge a written report containing:

1. Date and time of the discharge;
2. Location of the discharge;
3. Origin of the discharge;
4. Estimated volume of the discharge;
5. Daily rainfall measurements for the 30 days prior to the discharge event;
6. Sample analysis results of the discharge; and,
7. Steps taken to prevent reoccurrence of the discharge.

Timely reporting of an unpermitted discharge does not authorize any such discharge or excuse the Respondents from the requirement in paragraph 8 to apply for an NPDES permit. Also, any reporting of a discharge does not alleviate any further EPA enforcement action.

7. Within thirty (30) calendar days of receipt of this Order, Respondents shall provide to EPA a Best Management Practice (BMP) implementation plan (plan) for review and approval. The plan shall set forth measures the Respondents will take to prevent the discharge of pollutants from the facility to waters of the United States. The plan shall also include a schedule for completing the implementation of the measures within ninety (90) days of approval of the plan and schedule by EPA. Respondents shall respond to any EPA comments on the plan and schedule within fifteen (15) days of receipt of the comments. Upon approval by the EPA, the schedule will be incorporated into this Order as an enforceable requirement.

8. Unless Respondents can completely demonstrate that no further discharges will occur from the facility to waters of the United States, Respondents shall, within ninety (90) days of receipt of this Order, submit a complete application for an NPDES permit to the EPA. However, if the facility discharges any agricultural waste or other pollutant(s) to any water of the United States, Respondents shall submit this application to the EPA no later than thirty (30) days after

such discharge. The application must include a site-specific Nutrient Management Plan (NMP), which meets the requirement of 40 C.F.R. § 122.42(e).

9. Respondents shall provide each notification or report required by this Order, and a copy of the permit application referenced in paragraph 8, above, to the following:

David Rise
U.S. Environmental Protection Agency
Region 8, Montana Office
10 W 15 ST, Suite 3200
Helena, MT 59626
rise.david@epa.gov
(406) 457-5012

10. Respondents shall submit to EPA monthly reports of its efforts to achieve compliance with this Order, postmarked by the 10th day of every month, until EPA notifies the Respondents, in writing, that it no longer requires such reports. Each report shall include an update of the progress of the plan required by paragraph 7 of this Order and local rainfall amounts for the previous month, as well as copies of all monitoring logs and records required by this Order.

11. Respondents shall allow access by any authorized representatives of EPA, including but not limited to any of the agency's contractors, upon proper presentation of credentials, to the facility and to records relevant to this Order for the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

12. This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency to enter the facility, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit or court order.

13. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondents of its obligation to comply with any applicable Federal, State or local law or regulation.

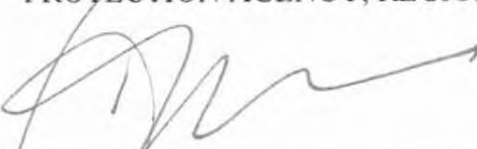
14. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$37,500 per day for each violation of § 301 of the Act, 33 U.S.C. § 1311, or of any order issued by EPA under § 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, § 309(g) of the Act, 33 U.S.C. 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, § 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

15. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.

16. This Order shall be effective upon receipt by Respondents.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: March 29, 2011



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, notices, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.

(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S.

EPA, states, and other compliance assistance providers

(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.