

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) Docket No. CWA-07-2006-0073
)
SCOTT & DENISE LAURITSEN)
d/b/a)
LAURITSEN CATTLE COMPANY) CONSENT AGREEMENT AND
) FINAL ORDER
)
Respondents,)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Scott and Denise Lauritsen d/b/a Lauritsen Cattle Company (Respondents) have agreed to settle this action before EPA files a complaint. Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondents' alleged discharges of pollutants into the Nishnabotna River and its tributaries, navigable waters of the United States in Audubon County, Iowa.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation into the navigable waters of the United States without obtaining the necessary permit(s) required by Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

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. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

4. The CWA prohibits the unpermitted discharge of “pollutants” by any “person” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. “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.

6. “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.”

7. An “animal feeding operation” 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.

8. According to 40 C.F.R. § 122.23(b)(2) a “concentrated animal feeding operation” is an animal feeding operation that meets the definition of either a Large CAFO or Medium CAFO under 40 C.F.R. § 122.23(b)(4) or 40 C.F.R. § 122.23(b)(6).

9. "Large CAFO" is defined by 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation where at least "1,000 cattle other than mature dairy cows or veal calves" are stabled or confined.

10. "Waters of the United States" are defined in 40 C.F.R. § 122.2 to include interstate rivers and streams, and tributaries thereto.

11. The Iowa Department of Natural Resources ("IDNR") is the agency within the State of Iowa with the delegated authority to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 301, 33 U.S.C. § 1311.

Factual Allegations

13. Respondents own and operate an animal feeding operation that is located in Section 8 of Township 78 North, Range 35 West, in Audubon County, Iowa (Facility).

14. On April 28, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility.

15. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.

16. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.

17. 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).

18. At the time of the EPA inspection, the Facility was confining approximately 3,500 head of cattle. The number of cattle confined and fed at the Facility is greater than 1,000 therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4).

19. Respondents do not have an NPDES permit for the Facility.

20. A majority of the runoff from Respondents' feeding area flows south into a county road ditch which in turn flows southwest for approximately 1.75 miles until it reaches the Nishnabotna River. Runoff from a portion of the Respondents' northern feeding area flows east into an unnamed tributary of the Nishnabotna River. This unnamed tributary runs east from

Respondents' property and meets up with the Nishnabotna River at a confluence that is located approximately 0.5 miles east of the facility.

21. The Nishnabotna River and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.

22. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to this unnamed tributary.

23. Based on the size of the Facility, the distance from the Facility to waters of the United States, 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 the Nishnabotna River and its tributaries during significant precipitation events.

24. The flow of wastewater from Respondents' Facility to the Nishnabotna 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 Clean Water Act, 33 U.S.C. §1311 and 1342, and implementing regulations.

Alleged Violations

25. The allegations set forth in paragraphs 1 through 24 are incorporated herein.

26. Respondents are persons as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

27. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4)(iii), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). As a result, the Facility is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

28. The number of cattle confined and fed at the Facility is above the threshold defined in 40 C.F.R. § 122.23(b)(4)(iii) for Large CAFOs.

29. The Nishnabotna River and its unnamed tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.

30. Wastewater runoff, which is discharged from the Facility into the Nishnabotna River and its tributaries during and after precipitation events, contains "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

31. Respondents' Facility has discharged wastewater into the Nishnabotna River and its tributaries. Respondents' discharges constitute unauthorized discharges of pollutants from a point source to waters of the United States. This, coupled with Respondents not having an NPDES permit has resulted in violations of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulation.

CONSENT AGREEMENT

32. Respondents admit the jurisdictional allegations in this Consent Agreement and Final Order and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement and Final Order.

33. Respondents neither admit nor deny the factual allegations contained in this Consent Agreement and Final Order.

34. Respondents waive any right to contest the allegations as well as their rights to appeal the proposed Final Order accompanying this Consent Agreement.

35. Respondents and Complainant each agree to bear their own costs and attorney's fees.

36. Nothing contained in the Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

37. Respondents consent to the issuance of the Final Order and consent to the payment of a civil penalty of Twenty-nine Thousand Seven Hundred dollars (\$29,700) plus interest.

A. Respondents shall pay the penalty in monthly installments of One Thousand Two Hundred Fifty Dollars and Eight-six Cents (\$1,250.86) that include principal and accrued interest for a period of two (2) years beginning thirty (30) days after the effective date of this Consent Agreement and Final Order.

B. Respondents agree that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently one percent per annum for the period January 1, 2005, through December 31, 2005).

C. Respondents agree that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

38. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251.

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Stephen Pollard
CAFO Compliance Officer
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

39. Respondents' failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

40. This Consent Agreement and Final Order disposes of all civil and administrative penalty claims for all the CWA violations identified herein. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondents reserve the right to defend against such actions on any basis in law or fact.

41. The undersigned representatives of the Respondents certify that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondents to it.

42. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

For the Respondents:

1-9-06
Date

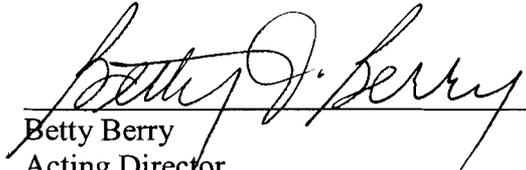
Scott Lauritsen
Scott Lauritsen
Lauritsen Cattle Company

1-9-06
Date

Denise Lauritsen
Denise Lauritsen
Lauritsen Cattle Company

For the United States Environmental Protection Agency - Region 7

03/20/06
Date

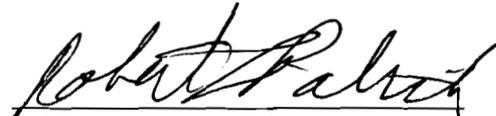

Betty Berry
Acting Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency - Region VII


J. Daniel Breedlove
Assistant Regional Counsel
U.S. Environmental Protection Agency Region VII

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.


ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: March 22, 2006

IN THE MATTER OF Scott & Denise Lauritsen d/b/a Lauritsen Cattle Company, Respondents
Docket No. CWA-07-2006-0073

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by overnight Federal Express to:

Scott and/or Denise Lauritsen
Lauritsen Cattle Company
3015 Highway 71
Exira, Iowa 50076

3/20/06

Dated



Kathy Robinson
Regional Hearing Clerk