

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

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)	
CIRCLE 7 FEEDYARD, INC.)	Docket No. CWA-07-2008-0002
)	
)	
CHEROKEE COUNTY, IOWA)	
)	
Respondent,)	FINDING OF VIOLATION
)	ORDER FOR COMPLIANCE
)	
)	
Proceedings under)	
Section 308(a) and 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. §§ 1318(a) and 1319(a)(3))	
_____)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318(a) and 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. Circle 7 Feedyard, Inc., (“Respondent”) operates an animal feeding operation (“Facility”) that is located in Section 13 of Township 90 North, Range 40 West, in Cherokee County, Iowa.

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, 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 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.” 40 C.F.R. § 122.23(b) does not distinguish between indoor and outdoor confinement for the purpose of counting the number animals stabled or confined at an animal feeding operation.
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 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.

Factual Background and Findings of Violation

14. Respondent owns and operates an animal feeding operation that is located in Section 13 of Township 90 North, Range 40 West, in Cherokee County, Iowa. The Facility is a dual confinement operation. A dual confinement operation is one that uses enclosed structures known as total confinement buildings and open pens to confine cattle.
15. The Facility confines and feeds or maintains cattle for a total of 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. Inspectors from EPA inspected the Facility on April 19, 2007.
19. At the time of the April 19, 2007 inspection, the Facility was confining approximately 3,357 head of cattle. Of these, 379 cattle were in the open pens and 2,978 feeder cattle were confined in the total confinement buildings. 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).
20. Respondent did not have an NPDES permit for the Facility.
21. EPA inspectors observed evidence that runoff containing manure solids flows from the open pens and other areas at the Facility towards and into a field tile inlet. Inspectors observed that manure and other materials had accumulated in and around the tile inlet. Evidence indicates that the drainage tile drains to an unnamed intermittent tributary (this tributary was flowing at the time of inspection) which then flows approximately 1.5 miles to the Maple River.
22. Maple River is a water of the United States, as defined by 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 to the unnamed intermittent tributary and then to the Maple River.
24. Based on the size of the Facility, the location of the drainage tile inlet, the connection between the drainage tile to the intermittent tributary, and the distance to the perennially flowing Maple River, wastewater containing pollutants from the Facility will discharge into the Maple River as a result of significant precipitation events.
25. The ongoing flow of wastewater from Respondent's Facility to the intermittent tributary and then to the perennially flowing Maple River 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.

Order for Compliance

Based on the Findings of Violation set forth above, and pursuant to Section 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:

26. Within fifteen (15) days of the effective date of this Order, Respondent shall submit an Interim Measures Plan to the EPA for review and approval. The Plan shall describe, in detail, actions that Respondent will take to reduce the discharge of runoff from Respondent's feedlot to waters of the United States. The Plan shall also include a schedule for implementation of the interim measures. Respondent shall implement the interim measures until the facility is operated in a manner that complies with the Clean Water Act. Upon EPA approval of the Interim Measures Plan, Respondent shall implement the Plan immediately.
27. Within one (1) year of the effective date of this Order, Respondent shall cease all discharges or remove cattle from all areas within the Facility where runoff is not controlled in a manner to prevent discharges to waters of the United States. If cattle cannot be confined at the Facility in a manner that prevents discharges to waters of the United States then Respondent shall reduce the number of cattle confined at the Facility below regulatory thresholds within one (1) year of the effective date of this Order. Respondent shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents discharges to waters of the United States.

28. Respondent shall apply to IDNR for all applicable permits. If Respondent intends to construct runoff control structures then beginning thirty (30) days after receipt 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.
29. 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.
30. On a quarterly basis for two (2) years, Respondent shall submit to EPA copies of inventory records that document the number of cattle confined at the Facility as well as the pen ID/numbers in which they are held and designate whether the pens are indoors or outdoors. The first quarterly report shall be submitted to EPA on March 7, 2008, and submitted quarterly thereafter for two (2) years.

Effect of Order

31. 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.
32. 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.
33. 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.
34. 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.

35. 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.

36. All submissions to the EPA required by this Order shall be sent to:

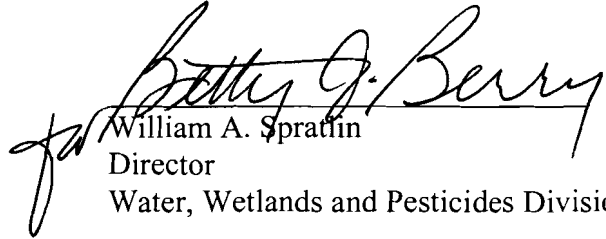
Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

37. 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.

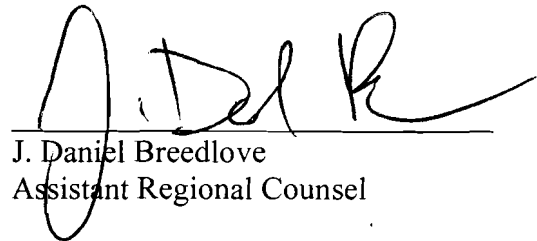
38. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

39. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 01/10/08


William A. Sprafin
Director
Water, Wetlands and Pesticides Division

Date 12/19/07


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date note 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. Jack Foresman
6277 "R" Avenue
Cherokee, Iowa 51012

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 Nebraska:

Kenneth Hassenius
Field Office Supervisor
Field Office #3
Iowa Department of Natural Resources
1900 North Grand Avenue
Spencer, Iowa 51301.



1-11-08

Date