

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 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 40 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)(4).
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.”
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 Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the State of Nebraska that is authorized to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The EPA maintains concurrent enforcement

authority with authorized state NPDES programs for violations of the CWA.

14. NDEQ issued a General Permit for CAFOs confining cattle in open lots (NEG011000). This general permit became effective on April 1, 2008 and expires on March 31, 2013.

Factual Background

15. Respondent owns and operates an animal feeding operation that is located in the northwest ¼ of Section 34, Township 21 North, Range 01 West, Madison County, Nebraska (the "Facility").
16. On or around June 9, 2011, EPA personnel conducted a compliance inspection of the Facility that consisted of a review of facility operations, required records, waste generation and management practices, and a visual inspection of the facility.
17. The Facility consists of approximately 150 acres of open lots with three manure and process wastewater holding ponds (holding ponds Nos. 1, 2, and 3). Each holding pond has a staff gauge to measure process wastewater levels.
18. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
19. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.
20. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
21. The Facility confines and feeds approximately 8,600 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) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
22. On March 3, 2008, Respondent was issued NPDES permit coverage under the General Permit described in paragraph 14 and was assigned an NPDES permit number NEG011040.
23. The Facility operates under a Nutrient Management Plan (NMP), which is intended to provide a system to maintain compliance with land application of manure and process wastewater. The NMP is part of the Facility's NPDES permit.
24. Uncontrolled runoff from Respondent's feedlot would flow generally to the south to an unnamed tributary of Tracy Creek located approximately 500 feet south of the Facility.

The unnamed tributary flows approximately 2 miles to Tracy Creek.

25. The unnamed tributary of Tracy Creek and Tracy Creek are waters of the United States, as defined under 40 C.F.R. Part 122.2.
26. On or about May 26, 2011, EPA inspectors flew over the Facility to document site conditions through observations and aerial photography. During the flight, the EPA inspectors observed that the Facility was discharging.

Findings of Violation

Count I

Unauthorized Discharges from the Facility

27. Part II(a)(1) of Respondent's NPDES permit, states that cattle open lot CAFOs are not allowed to discharge manure, litter, or process wastewater pollutants into waters of the State from the production area or land application area except when precipitation causes an overflow of manure, litter, or process wastewater. The overflow may be discharged into waters of the State provided: (1) the livestock waste control facility is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event; (2) such discharge was the result of the rainfall event(s); (3) no feasible alternative to discharging existed; (4) only waste in excess of the storage capacity of the Livestock Waste Control Facility was discharged; (5) the discharge was conducted under such conditions to minimize any adverse effects to waters of the State; and (6) proper notification of the discharge was received.
28. Part III(G)(2) of Respondent's NPDES permit requires Respondent to stockpile all livestock wastes removed from the facility in a manner that will not contribute to water pollution.
29. Based on aerial photographs, observations by EPA's inspector during the June 9, 2011 inspection, and information provided by Respondent, Respondent's CAFO discharged manure and process wastewater to the unnamed tributary of Tracy Creek from holding pond No. 1 for a 24-hour period between May 26 and May 27, 2011. This discharge was not a result of a 25-year, 24-hour storm event. The unauthorized discharge occurred when process wastewater overtopped the holding pond No. 1's berm and was a result of, among other things, improper construction or maintenance of holding pond No. 1 and Respondent's failure to maintain water levels in the holding pond below permitted capacity. Respondent's failure to maintain water levels below permitted capacity was due in part to a defective staff gauge that displays incorrect water levels.

30. Based on observations by EPA's inspector and information provided by Respondent, Respondent maintains a holding pen on the northeast portion of the site enclosing approximately 350 head of cattle. This portion of the facility is not covered under the current permit. The holding pen is not improved with a manure and process wastewater holding pond, and manure and process wastewater generated in this holding pen has and will discharge overland to the unnamed tributary of Tracy Creek during significant rain events.
31. Based on observations by EPA's inspector and information provided by Respondent, Respondent maintains a holding pen on the south west portion of the site near holding pond No. 1. This southwest pen does not have adequate runoff controls. During significant rain events, runoff flows south out into a field and into the unnamed tributary of Tracy Creek.
32. At the time of the EPA inspection, EPA's inspector observed that Respondent's manure stockpiling areas lacked adequate runoff controls to prevent discharges as required by Respondent's NPDES permit.
33. Respondent's unauthorized discharges of pollutants to Tracy Creek and its tributaries are violations of Respondent's NPDES permit and, as such, is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1301 and 1342.

Count II

Holding Pond Monitoring and Operational Requirements

34. Part II (G)(1)(b) and Part II (D)(1)(a) and (b) of Respondent's NPDES permit requires Respondent to place and maintain a staff gauge in each holding pond. The staff gauge must be maintained to measure the holding pond's liquid depth and measure accumulations of manure, litter, and process wastewater.
35. At the time of EPA's June 9, 2011, inspection, Respondent's staff gauge in holding pond No. 1 did not accurately reflect process wastewater levels. Records obtained during EPA's inspection state that the total depth of holding pond No. 1 is 22 feet. However, pond level logs indicate that Respondent's staff gauge read 20.5 feet when manure and process wastewater overtopped the holding pond during the May 26 to May 27, 2011 discharge. Respondent's staff gauge is therefore inaccurate by approximately 1.5 feet. Later statements by Respondent indicate that the staff gauge may be inaccurate by approximately 3-4 feet.

36. Respondent's failure to adequately maintain the staff gauge in holding pond No. 1 to accurately reflect process wastewater levels is a violation of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count III

Holding Pond Levels

37. Parts II (G)(2)(a)-(b) and III (F)(2) of Respondent's NPDES permit requires Respondent to begin pumping livestock wastes when the waste storage volume in a holding pond exceeds the "Must Pump" level. Pumping shall begin as soon as possible and the livestock wastes shall be land applied on all available dewatering days until adequate storage is restored. Respondent is required to dewater the holding ponds before the winter months to provide capacity indicated by the "Winter Pump Down" level.
38. According to a review of Respondent's holding pond records, and inspector's observations obtained at the time of EPA's June 9, 2011 inspection, Respondent failed to maintain the process wastewater levels in Holding Pond No. 1 below "Must Pump" and "Winter Pump Down" levels. This contributed to holding pond No.1 overtopping its berm on May 26th, 2011.
39. Respondent's failure to adequately maintain levels in the holding ponds is a violation of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count IV

Unauthorized Discharge From Land Application Fields

40. Part III (H)(1) of Respondent's NPDES permit requires that the Respondent prevent discharges of livestock waste into waters of the State resulting from land application by, *inter alia*, (1) utilizing application sites that are under proper conservation treatment to prevent runoff into waters of the State; (2) applying livestock wastes at a rate and in such a manner that will not produce runoff into waters of the State; and (3) managing land application irrigation practices to prevent runoff and to reduce or minimize ponding of livestock waste on application area. Moreover, Respondent's Nutrient Management Plan states that land application of process wastewater effluent from the holding ponds shall be discontinued if subject to runoff.
41. Based on aerial photographs, sampling, and observations by EPA's inspector during the June 9, 2011, inspection, irrigation practices at Respondent's CAFO resulted in runoff of livestock wastes from the application area located to the west and southwest of the

Facility into the unnamed tributary of Tracy Creek. These discharges occurred sometime between May 27, 2011, to on or about June 8, 2011, and were the result of, among other things, formation of channelized flow paths in the application field due to improper conservation treatment and improper application to areas that are not managed to prevent runoff into waters of the State.

42. Respondent's unauthorized discharge of pollutants to Tracy Creek and its tributaries is a violation of Respondent's NPDES permit and Nutrient Management Plan, and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count V

Notification Requirements

43. Part II (B)(1)-(2) of Respondent's NPDES permit requires that the Respondent verbally notify the Department within 24 hours of a discharge, and submit a discharge notification form within five days of a discharge.
44. According to information provided by Respondent, Respondent failed to provide the mandated verbal and written notification of the discharges from holding pond No. 1 occurring on May 26 and May 27, 2011.
45. Respondent's failure to provide notification and reporting of discharges is a violation of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

Count VI

Liquid Waste Nutrient Analysis

46. Section 1.2.5 of Respondent's Nutrient Management Plan requires that Respondent perform a nutrient analysis for nitrogen and phosphorous content on process wastewater and solid manure before any land application. The results of the nutrient analysis shall be used to determine appropriate land application rates. Respondent is required to maintain records of its nutrient analysis for five years. Section 1.33 of Respondent's NMP requires that effluent will be land applied at no more than agronomic rates.
47. Based on review of Respondent's records and statements made by the Respondent at the time of the EPA inspection, Respondent had failed to perform a nutrient analysis and determine land application rates for liquid waste before land application events.

48. Respondent's failure to conduct a nutrient analysis and determine land application rates are violations of Respondent's Nutrient Management Plan and as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342

Count VII

Process Wastewater Application Records

49. Part II(F)(2) of Respondent's NPDES permit and Respondent's Nutrient Management Plan require that Respondent keep records on all land applications of process wastewater for five years. The records shall include, among other things, the date of application, the type and amount of process wastewater applied, the field to which process wastewater was applied, and the number of acres where wastes were applied.
50. Based on review of Respondent's records and statements made by the Respondent at the time of the EPA inspection, Respondent had failed to prepare and maintain records associated with process wastewater applications for 2010, as required by Respondent's NPDES permit and the NMP.
51. Respondent's failure to maintain land application records as required by the NMP and NPDES permit are violations of Respondent's NPDES permit and NMP, and as such, are violations of Section 402 of the CWA, 33 U.S.C. § 1342.

Order for Compliance

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

52. Respondent shall immediately comply with all requirements of its NPDES permit and the CWA.
53. Respondent shall immediately cease operations within areas of the Facility where manure and process wastewater cannot be managed to prevent unauthorized discharges to waters of the United States. In particular, Respondent shall immediately construct runoff controls to prevent the unauthorized discharge of manure or process waste water from holding ponds and manure stockpiles or remove these materials from areas where they are exposed to precipitation or lacking adequate controls.
54. Respondent shall immediately comply with all applicable requirements regarding the proper land application of solids and process waste water to prevent runoff.

55. Respondent shall immediately ensure that waste water levels in all holding ponds are in compliance with the "Must Pump" levels of Respondent's NPDES permit.
56. Respondent shall immediately ensure that staff gauges located in all Facility holding ponds accurately reflect process wastewater levels. Respondent shall also ensure that holding pond #1 has enough capacity to meet the original design criteria.
57. Respondent shall immediately conduct a nutrient analysis for liquid waste to determine application rates for 2011 in accordance with Part II (A)(2)(b) of the NPDES permit.
58. 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 satisfy the requirements of this Order.
59. If Respondent intends to construct runoff control structures to allow for the confinement of cattle in areas which currently lack runoff controls, then beginning 30 days after 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 or will be addressed.
60. Upon completion of runoff control structures, Respondent shall submit to the EPA a Notice of Construction Completion within thirty (30) days of when the construction of all feedlot waste control structures is completed. This notification shall be in writing and shall include as-built drawings of the constructed improvements.
61. On a quarterly basis for the periods of April-June, July-September, October-December, and January-March, Respondent shall submit to EPA (pursuant to paragraph 67 of this Order) copies of all retention basin level, precipitation, and land application records that Respondent is required to keep pursuant to its NPDES permit and NMP. Records must be submitted on or before the seventh day of the month following the end of the period (October 7, January 7, April 7, and July 7). The first report shall be submitted to EPA by October 7, 2011. The final report for this Order shall be submitted to EPA by July 7, 2012.

Effect of Order

62. 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

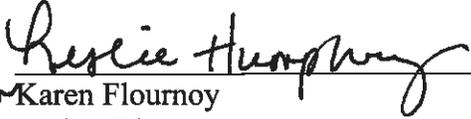
recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

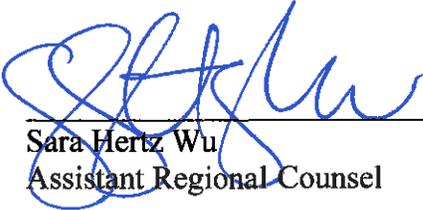
63. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.
64. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect 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.
65. 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.
66. 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.
67. 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
68. 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.

69. 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).
70. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 8.15.2011


for Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division


Sara Hertz Wu
Assistant 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 officer for John Reigle d/b/a Reigle Farms.

Mr. John Reigle
Owner
Reigle Farms
55510 823rd Road
Madison, Nebraska 68748

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:

Dennis Heitmann
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
P.O. Box 98922
Lincoln, Nebraska 68509

Carah A. Moreno

8/16/11

Date