

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

BEFORE THE ADMINISTRATOR

COUNTY EDGE DAIRY, INC.	)	
INWOOD, IOWA	)	Docket No. CWA-07-2013-0009
	)	
Respondent	)	FINDING OF VIOLATION
	)	ORDER FOR COMPLIANCE
	)	
Proceedings under	)	
Sections 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 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 County Edge Dairy, Inc. (“Respondent”) owns and/or operates an animal feeding operation located in the SW ¼ of the SW ¼ of Section 31, Township 98 North, and Range 47 West, located in Richland Township of Lyon 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 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. 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(6) 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(14) 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.”
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)(i) as an animal feeding operation that stables or confines as many as, or more than, “700 mature dairy cows, whether milked or dry.”
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 authorized to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

**Factual Background and Findings of Violation**

14. Respondent owns and operates an animal feeding operation (“Facility”) that is located in the SW ¼ of the SW ¼ of Section 31, Township 98 North, and Range 47 West, located in Richland Township of Lyon County, Iowa.
15. The Facility confines and feeds or maintains dairy cows 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 Respondent’s Facility on July 25, 2012 to determine Respondent’s compliance with the CWA.
19. At the time of the July 25, 2012 inspection, the Facility was confining approximately 770 head of dairy cows. Facility records indicated between 200 and 250 dairy heifers were also being confined at the main facility. The number of dairy cows confined and fed at the Facility is greater than 700, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4).
20. At the time of the July 25, 2012 inspection, Respondent did not have a NPDES permit for the Facility. To date, Respondent has not applied for a NPDES permit.
21. Runoff from Respondent’s feeding areas flows through several different discharge paths into two unnamed tributaries of Dry Run Creek. The unnamed tributaries converge southeast of the Facility and flow approximately 4.5 miles to its confluence with Dry Run Creek, a perennial stream.
22. Dry Run Creek and its tributaries are waters of the United States, as defined by 40 C.F.R. § 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the unnamed tributaries to Dry Run Creek.
24. Based on the size of the Facility, the distance from the Facility to the unnamed tributaries to Dry Run Creek, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility will discharge

into the unnamed tributaries to Dry Run Creek as a result of significant precipitation events.

25. The ongoing flow of wastewater from Respondent's Facility to the unnamed tributaries to Dry Run Creek 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 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:

26. Respondent shall comply with the Clean Water Act by immediately ceasing discharges or removing livestock from all areas within the Facility where runoff is not controlled in a manner to prevent discharges to waters of the United States. If livestock cannot be confined at the Facility in a manner that prevents discharges to waters of the United States then Respondent shall immediately reduce the number of livestock confined at the Facility below regulatory thresholds. Respondent shall not repopulate livestock above regulatory thresholds at the Facility unless the Facility can be operated in a manner that prevents discharges to waters of the United States and maintains compliance with the Clean Water Act.
27. Regardless of whether the number of livestock is reduced below regulatory thresholds, if Respondent cannot immediately cease all discharges from the Facility to waters of the United States, then Respondent shall immediately remove and properly dispose of manure from areas that cannot be controlled in a manner to prevent discharges.
28. Within 10 days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken to comply with the Clean Water Act and the terms of this Order.
29. Unless Respondent permanently reduces the number of livestock confined at the Facility below regulatory thresholds, Respondent shall obtain an NPDES permit for the Facility. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein including terms related to the construction and operation of livestock waste controls.
30. If Respondent intends to construct runoff control structures to allow the confinement of livestock above regulatory thresholds, then beginning thirty (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 the EPA, Respondent shall submit written monthly progress reports to the 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.

31. Upon completion of the 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.

#### **Effect of Order**

32. 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.
33. 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.
34. 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.
35. 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.
36. 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 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.

37. 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.
38. All submissions to the EPA required by this Order shall be sent to:

Stephen Pollard  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region, 7  
11201 Renner Boulevard  
Lenexa, KS 66219

39. 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.
40. 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).

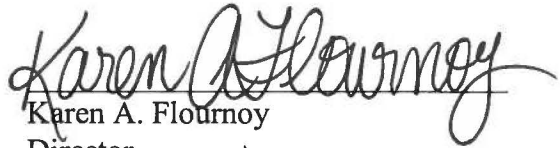
#### **Opportunity to Confer**

41. This Order shall become effective 30 days after receipt by Respondents. 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 this Order to the Respondent. Within ten days of receipt of this Order, Respondent may request in writing 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.


**Effective Date**

42. The terms of this Order shall be effective and enforceable against Respondent upon 30 days of receipt of the Order.

3/29/2013  
Date

  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

4.1.13  
Date

  
Christopher Muehlberger  
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:

Mr. Darren Davellar, Owner  
County Edge Dairy, Inc.  
1728 270<sup>th</sup> Street  
Inwood, Iowa 51240.

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:

Kenneth Hessenius  
Field Office Supervisor  
Iowa Department of Natural Resources, Field Office 3  
Gateway Mall North  
1900 North Grand Avenue  
Spencer, Iowa 51301.

  
\_\_\_\_\_  
Christopher Muehlberger

9.1.13  
\_\_\_\_\_  
Date