

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 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)

Barr Feedlot, Inc.)
Stanton, NE)

Docket No. CWA-07-2005-0063

and)

CTC Farm, Inc.)
Howells, NE)

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE

Respondents)

Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (“Order”) are made and 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 VII, and redelegated to the Director of Region VII’s Water, Wetlands, and Pesticides Division.
2. Barr Feedlot, Inc. is a Respondent who owns a cattle feeding operation permitted by the State of Nebraska to confine 10,000 feeder cattle (“the Facility”). The Facility is located in the Southwest quarter of Section 23, Township 24N, Range 2E and the Northwest quarter of Section 26, Township 24N, Range 2E in Stanton County, Nebraska. The principal place of business of Barr Feedlot, Inc. is located at 707 Kingwood, P.O. Box 175, Stanton, NE 68779.

3. CTC Farm, Inc. is a Respondent that operates a feeder cattle operation that maintains an average of 3,300 cattle on land, the Facility, leased from Barr Feedlot. The Facility is located in the Southwest quarter of Section 23, Township 24N, Range 2E and the Northwest quarter of Section 26, Township 24N, Range 2E in Stanton County, Nebraska. The mailing address for CTC Farm, Inc. is 883 4th Road, Howells, NE 68641.

Statutory and Regulatory Framework

Concentrated Animal Feeding Operation

4. 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.
5. 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.
6. 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.”
7. To implement Section 402 of the CWA, 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.
8. “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.
9. “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.”
10. “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.

11. 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).
12. “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.
13. Concentrated Animal Feeding Operations are by definition point sources subject to the NPDES permit program as defined under 40 C.F.R. § 122.23(a).
14. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include all interstate waters.
15. The Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the state of Nebraska with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the CWA, the Nebraska Environmental Protection Act (Secs. 81-1504 (11), Reissue 1987), and the State of Nebraska Department of Environmental Quality, Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

16. Respondent Barr Feedlot, Inc. is a corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
17. Respondent CTC Farm, Inc. is a corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
18. Barr Feedlot, Inc., is a Respondent who owns a feeder cattle operation permitted by the State of Nebraska to confine 10,000 feeder cattle. The Facility is located in the Southwest quarter of Section 23, Township 24N, Range 2E and the Northwest quarter of Section 26, Township 24N, Range 2E in Stanton County, Nebraska.
19. CTC Farm, Inc. is a Respondent who operates a feeder cattle operation leased from Barr Feedlot, Inc. The Facility is located in the Southeast quarter of Section 22, Township 24N, Range 2E, the Southwest quarter of Section 23, Township 24N, Range 2E, the Northwest quarter of Section 26, Township 24N, Range 2E and the Northeast quarter of Section 27, Township 24N, Range 2E in Stanton County, Nebraska. The Facility consists of, among other things, seven pen areas and one sedimentation basin.

20. The Facility operates under a permit issued to Barr Feedlot, Inc. in 1993 and administratively extended in 1998. On May 1, 2002 NDEQ issued a Letter of Warning to the Respondents for failure to submit an "Application for Permit to Construct and Operate a Livestock Waste Control Facility." On August 28, 2002, NDEQ issued a Notice of Violation (NOV) for failure to submit the application for a construction permit. On March 31, 2003, Respondents submitted a complete Application for Permit to Construct and Operate a Livestock Waste Control Facility." In response to that submission, NDEQ requested additional information be submitted by September 30, 2003. Respondents submitted the requested additional information.
21. On May 21, 2004, EPA conducted an NPDES inspection of Respondents' animal feeding operation.
22. The Facility confines and feeds or maintains at least 1,000 cattle for a total of 45 days or more in any twelve-month period.
23. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the confined feeding areas at the Facility at the time of the inspection.
24. At the time of the inspection and at all times pertinent to this Order, the Facility confined at least 1000 beef cattle and therefore is defined as a Large CAFO by 40 C.F.R. § 122.23(b)(4).
25. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4), and therefore is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
26. The Facility does not have livestock waste controls to control wastewater runoff from the open feedlots. Wastewater from the Facility discharges to an unnamed tributary of Payne Creek. This tributary flows across the Facility and connects to Payne Creek.
27. Payne Creek and its unnamed tributary are waters of the United States, as defined under 40 C.F.R. § 122.2.
28. Based on the size of the Facility, the distance of the Facility from waters of the United States, and the slope and condition of the land across that distance, EPA has concluded that wastewater containing pollutants from open lots at the Facility has flowed, and will continue to flow, into Payne Creek and its unnamed tributary during precipitation events, including precipitation events that are smaller than 25-year, 24-hour storm events.

29. The ongoing flow of wastewater from Respondents' Facility to Payne Creek and its unnamed tributary constitutes an unauthorized discharge of pollutants from a point source to waters of the United States.

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), Respondents are hereby ORDERED to take the following actions to eliminate the violations of permit conditions and the CWA:

30. Within 15 days of receipt of this Order, Respondents shall submit, in writing to EPA for review and approval, an interim measures plan ("Plan"). Upon EPA approval, Respondents shall implement the Plan immediately and continue its implementation until Respondents complete construction of the wastewater control structures necessary to comply with the CWA. The Plan shall describe in detail, actions that Respondents will take to reduce the discharge of runoff from the Facility to waters of the United States. The Plan shall include specific actions that will immediately reduce runoff of pollutants from the Facility. The Plan shall also include a schedule for implementation of the interim measures.
31. Within one year of the effective date of this Order, Respondents shall complete construction of feedlot waste control structures that prevent the unauthorized discharges from the Facility to waters of the United States. If construction is not completed by this date, Respondents shall cease operations within areas of the Facility where feedlot runoff cannot be managed to prevent discharges to waters of the United States.
32. Respondents shall submit to EPA a notice of construction completion within thirty 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.
33. Thirty days after the effective date of this Order Respondents shall submit a written progress report to EPA. Respondents shall submit a written progress report to EPA every month (on or before the 7th day of each month) until such time as Respondents complete construction of its feedlot waste control structures and submit the notice of construction completion. Each progress report 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.

34. Upon completion of construction, and continuing until such time as NDEQ reissues an NPDES Permit for the Facility, Respondents shall maintain the following operational records: 1) records of the waste levels in lagoons (or waste levels in any similar liquid waste storage structure) taken after every event that either raises or lowers lagoon waste levels, e.g., land application events or precipitation events; 2) land application records, including application date, location of application, amount of waste applied, and application rate; and 3) records of precipitation at the Facility. Respondents shall submit copies of these records to EPA on a quarterly basis for the periods of January-March, April-June, July-September and October-December. Records must be submitted on or before the 15th day of the month following the end of the period (e.g., January 15, 2005, April 15, 2005, July 15, 2005 and October 15, 2005). Upon receipt of an NPDES permit, Respondents shall maintain and submit records as required by the reissued NPDES permit.
35. Within seven days of completion of feedlot waste control construction, if required by NDEQ, Respondents must submit an application for a new NPDES permit to NDEQ. Respondents shall provide written notice to EPA stating that it submitted an NPDES application to NDEQ.

Effect of Order

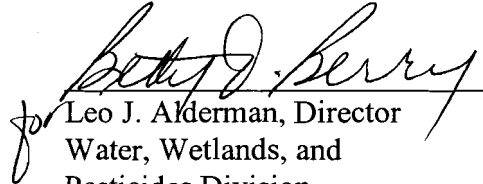
36. Compliance with the terms of this Order shall not relieve Respondents of liability for, or preclude EPA from initiating an administrative or judicial enforcement action to recover, penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
37. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of its responsibility to obtain any required local, state and/or federal permits.
38. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondents' Facility, and/or to request additional information from Respondents pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.


39. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, 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.
40. If any provision of this Order, or the application of this Order to Respondents is invalidated by federal judicial authority, the remainder of this Order shall remain in full force and effect with respect to Respondents and shall not be affected by such a holding.
41. All submissions to EPA required by this Order shall be sent to:

Kimberly Harbour
CAFO Enforcement Program
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency Region VII
901 N. 5th Street
Kansas City, KS 66101
42. Pursuant to 40 C.F.R. 2.201-2.311, Respondents may assert business confidentiality claims 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 EPA to release the submitted information to the public without further notice. 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 CWA appear in 40 C.F.R. § 2.302.
43. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondents 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).

44. The terms of this Order shall be effective and enforceable against Respondents upon their receipt of the Order.

Date 12/13/04


for Leo J. Alderman, Director
Water, Wetlands, and
Pesticides Division
EPA Region 7


J. Daniel Breedlove
Assistant Regional Counsel

letter and small business assistance information, to the following registered agents for Barr Feedlot, Inc. and CTC Farm, Inc.:

Kenneth F. Patry
Registered Agent for Barr Feedlot, Inc.
8000 Chicago Street
Omaha, Nebraska 68114

Richard A. Coufal, Sr.
Registered Agent for CTC Farm, Inc.
883 4th Road
Howells, NE 68641

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
Supervisor, Agriculture Section
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, 1200 N Street, The Atrium
Lincoln, NE 68509


Name _____

12/27/04
Date _____