

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 9 AM 10:13

REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

) Docket No. CWA-07-2008-0030

) POVERTY KNOB FARM, INC)

) IDA COUNTY, IOWA)

) CONSENT AGREEMENT/
) FINAL ORDER

) Respondent)

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

I. PRELIMINARY STATEMENT

These proceedings were initiated pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g). On February 1, 2008, the United States Environmental Protection Agency (EPA or Complainant), Region VII issued a Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing (Complaint) to Poverty Knob Farm, Inc. (Respondent). The Complaint alleged violations of the CWA by Respondent at its concentrated animal feeding operation located in Ida County, Iowa.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdiction of EPA in this matter and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and the Final Order set forth below.

2. Respondent admits the factual allegations and legal conclusions set forth in the Complaint.

3. Respondent agrees not to contest the terms and conditions set forth in this Consent Agreement and Final Order in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order and agrees not to appeal the Final Order set forth below.

4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.

5. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for the violations set forth in the Complaint is \$157,500. However, Respondent has demonstrated that it is unable to pay any penalty in this matter and that the payment of a penalty will adversely impact the Respondent's ability to continue business. Pursuant to the requirement in Section 309(g) that EPA consider a Respondent's ability to pay the penalty and through this Consent Agreement and Final Order, Complainant conditionally agrees to resolve the claims alleged in the Complaint for ZERO DOLLARS.

6. In settlement of the claims alleged in the Complaint, Respondent agrees to the following:

A. Respondent agrees to fully comply with the CWA;

B. Respondent agrees to maintain below 1,000 animals at its feedlot unless runoff from production and land application areas (as defined by the federal regulations at 40 CFR 122.23) can be managed in a manner that prevents all discharges to waters of the United States that are inconsistent with the CWA and its implementing regulations;

C. Respondent agrees to not repopulate cattle above 1,000 animals unless it has received a National Pollutant Discharge Elimination System (NPDES) permit by the Iowa Department of Natural Resources (IDNR) and runoff controls sufficient to prevent all discharges to waters of the United States that are inconsistent with the CWA and its implementing regulations;

D. Respondent agrees to confine fewer than 300 animals at its feedlot unless the animals are confined in a manner that prevents the animals from having contact with a stream, creek, or other surface water; and drainage from the feedlot is not facilitated by any man-made conveyance to a water of the United States unless a NPDES permit has been issued for its feedlot by IDNR; and

E. Unless otherwise approved in writing by EPA and IDNR, Respondent agrees that when determining the regulatory status of its feedlot Respondent shall count all animals confined within the northern and southern pen areas of the feedlot as part of a single animal feeding operation.

7. Performance of the activities described in paragraph 6 shall resolve all civil and administrative claims of the United States alleged in the Complaint.

8. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342. The effect of the settlement described in paragraph 7 above is conditioned upon the accuracy of this certification and the accuracy of the financial documentation Respondent provided Complainant to demonstrate its inability to pay a penalty.

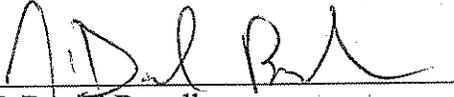
9. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

10. Respondent and EPA each agree to bear their own costs and attorneys' fees.

11. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

For the Complainant:

The United States Environmental Protection Agency



J. Daniel Breedlove
Assistant Regional Counsel

12/2/2008
Date



William A. Spratlin
Director
Water, Wetlands and Pesticides Division

12/2/08
Date

For the Respondent:

Poverty Knob Farms, Inc. by
Jon Schubert Jon Schubert
Poverty Knob Farm, Inc.

11-29-08
Date

FINAL ORDER

The foregoing Consent Agreement is hereby approved and ratified pursuant to 40 C.F.R. § 22.18(b)(3).

IT IS SO ORDERED.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date: December 9, 2008

IN THE MATTER OF Poverty Knob Farm, Inc., Respondent
Docket No. CWA-07-2008-0030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement/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 Certified Mail Return Receipt to:

Eldon L. McAfee
Beving, Swanson & Forrest, P.C.
321 E. Walnut, Suite 200
Des Moines, Iowa 50309

Dated: 12/9/08


Kathy Robinson
Hearing Clerk, Region 7