

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

)	
Darin Green)	
D/B/A/ Darin Green Feedlot)	Docket No. CWA-07-2010-0071
Boyden, Iowa)	
)	
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 308(a) and Section 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 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. The Respondent Darin Green (“Respondent”), doing business as Darin Green Feedlot, owns and/or operates an animal feeding operation located in Section 13 of Township 97 North, Range 44 West, in Sioux 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. 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 of pollutants may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.

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, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States. Furthermore, 40 C.F.R. § 122.23(d)(1) provides that a concentrated animal feeding operation (CAFO) must apply for an NPDES permit if it discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur.
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) as an animal feeding operation that stables or confines as many as, or 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 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 a cattle feeding operation located in the southeast ¼ of the northeast ¼ of Section 13 in Township 97 North, Range 44 West, in Sioux County, Iowa (Facility). The operation consists of a deep-bedded confinement building and open lot pens.
15. On October 29, 2009 and March 11, 2010, EPA personnel conducted compliance evaluation inspections of the Facility.
16. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
17. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.
18. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
19. At the time of the October 29, 2009, EPA inspection, the Facility was confining approximately 2,118 head of beef cattle. This total consisted of 972 beef cattle in the Facility's open pens and 1,146 beef cattle in a deep bedded confinement building. Approximately the same numbers of cattle were confined at the Facility on March 11, 2010.
20. 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).
21. At the time of the inspections, Respondent did not have an NPDES permit for the Facility.
22. Manure, litter and process waste water from the southern portion (the open pens) of the Facility is uncontrolled and flows into a grassed waterway. This waterway flows east approximately 450 yards before discharging into a tributary of Otter Creek. On March

11, 2010, EPA inspectors observed and sampled discharges of pollutants from the Facility into the tributary of Otter Creek

23. Otter Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.
24. EPA inspectors observed that the Facility does not have adequate livestock waste control structures to prevent the discharge of manure, litter and process waste water to Otter Creek and its tributaries. EPA inspectors also observed the stockpiling of manure and bedding material containing manure in an area without runoff controls.
25. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Otter Creek and its tributaries, the observed discharges, and the slope and condition of the land across that distance, manure, litter and process waste water will continue to discharge into Otter Creek and its tributaries as a result of significant precipitation events. Respondent's animal feeding operation discharges or proposes to discharge pollutants to waters of the United States.
26. The intermittent yet ongoing flow of process waste water from Respondent's Facility to Otter Creek and its tributaries as a result of significant precipitation events 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 CWA, 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 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:

27. Immediately upon receipt of this Order, Respondent shall comply with the CWA and cease all discharges of manure, litter or process wastewater from the Facility to waters of the United States.
28. If manure, litter or process wastewater cannot be managed 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 thirty (30) days 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 all discharges to waters of the United States.

29. If Respondent cannot immediately cease all discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter and process wastewater from areas that cannot be controlled in a manner to prevent discharges.
30. Within thirty (30) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions taken to comply with the CWA and the terms of this Order.
31. If Respondent intends to construct adequate runoff control structures to allow the confinement of cattle above regulatory thresholds, 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.
32. Upon receipt of this Order and continuing until such time as Respondent is issued an NPDES Permit for the Facility, Respondent shall perform the following monitoring and recordkeeping activities: (1) maintain land application records, including dates, location, amounts applied, and application rates; (2) maintain precipitation records; (3) provide a monthly accounting of the number of cattle confined at the Facility that includes a statement as to the number of cattle confined under roof and the number of cattle confined in outdoor pens; and, if applicable, (4) record and maintain storage facility liquid levels after every event with the potential to change the amount of liquid in the storage facility. Respondent shall submit copies of these records to the 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 seventh day of the month following the end of the period (April 7, July 7, October 7, and January 7). Upon issuance of an NPDES permit, Respondent shall maintain and submit records as required by the NPDES permit.

Effect of Order

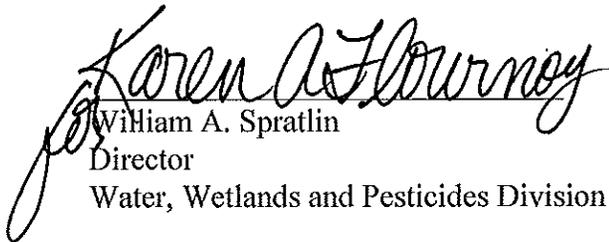
33. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.

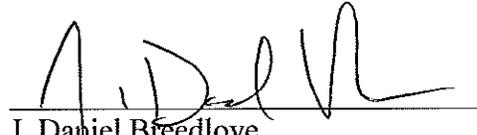
34. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 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. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, 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
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101
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 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.

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 \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
41. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

3-26-10
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


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:

Mr. Darin Green
2937 Kingbird Avenue
Boyden, Iowa 51234.

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:

Mr. Ken Hessenius
Iowa Department of Natural Resources
Field Office #3
1900 Grand Avenue
Gateway North Mall, Suite E17
Spencer, Iowa 51301.

Kimberly Kelly

3/30/10

Date