

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

Travis Klaassen)
Sibley, Osceola County, Iowa)
Respondent)
Proceedings under)
Section 309(a)(3))
of the Clean Water Act,)
33 U.S.C. § 1319(a)(3))
_____)
Docket No. CWA-07-2013-0062
FINDING OF VIOLATION
ORDER FOR COMPLIANCE

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. Travis Klaassen (“Respondent”) operates an animal feeding operation (“Facility”) that is located in SE ¼ of the SE ¼ of Section 24, Township 100 North, and Range 42 West, located in Osceola 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 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 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. The Federal Register preamble to 40 C.F.R. § 122 states that incidental vegetation in a clear area of confinement, such as a feedlot or pen, does not exclude an operation from meeting the definition of an AFO.
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) or 40 C.F.R. § 122.23(b)(6).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “2,500 swine each weighing 55 pounds or more.”

12. “Medium CAFO” is defined, according to 40 C.F.R. § 122.23(b)(6), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves” and either of the following conditions are met:
 - a) Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device; or
 - b) Pollutants are discharged directly into waters of the U.S. which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
13. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
14. Process wastewater” is defined by 40 C.F.R. § 122.23 as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”
15. “Production Area” is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.
16. 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 Allegations of Violation

17. Respondent owns and operates an animal feeding operation (“Facility”) that is located in the SE ¼ of the SE ¼ of Section 24, Township 100 North, and Range 42 West, located in Osceola County, Iowa.
18. Inspectors from EPA inspected Respondent’s Facility on April 24, 2013 to evaluate Respondent’s compliance with the CWA.
19. At the time of the EPA inspection, the Facility was confining approximately 1,054 head of swine over 55 pounds. However, Facility records demonstrate and Respondent’s statements confirm that the facility has confined at least 2,500 head of swine over 55 pounds for more than 45 days in the past 12 months. This facility also had 558 head of beef cattle confined in outdoor pens at the Facility at the time of the inspection and records confirm that the Respondent confined greater than 300 head of cattle for more than 45-days in the past 12 months.
20. Inspector observations confirmed that no vegetation or only incidental vegetation is present within confinement pens at the Facility.
21. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over any portion of the Facility’s indoor or outdoor confinement areas.
22. The Facility confines and feeds or maintains swine and/or cattle for a total of forty-five (45) days or more in any twelve month period.
23. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
24. The number of swine confined and fed at the Facility was greater than 2,500 for 45 days or more during a twelve month period, 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). Once an AFO is defined as a CAFO, manure and process wastewater generated by all animals confined at the CAFO are subject to NPDES permit requirements.

25. The EPA inspectors observed that the outdoor confinement pens at the Facility lack adequate runoff controls to prevent discharges of pollutants from the Facility to Otter Creek. The inspectors observed that the outdoor confinement pens drain to a roadside ditch, through a culvert under 130th Street and into Otter Creek.
26. The road ditch and culvert are a man-made ditch or similar man-made device that facilitate manure and process wastewater drainage from the Facility to Otter Creek.
27. Otter Creek is a water of the United States, as defined by 40 C.F.R. Part 122.2. Otter Creek is listed by Iowa as impaired for fish kills. The IDNR has identified un-ionized ammonia and organic enrichment/low dissolved oxygen as causes for the impairment. IDNR has also identified intensive animal feeding operations as the source.
28. Based on the size of the Facility, the presence of the road ditch and culvert, the lack of adequate runoff controls and the proximity of the Facility to Otter Creek, process wastewater containing pollutants from production areas at the Facility will continue to intermittently flow into Otter Creek as a result of significant precipitation events.
29. The intermittent flow of process wastewater from Respondent's Facility to Otter Creek constitutes unauthorized discharges of pollutants from a point source to waters of the United States. These are violations of Sections 301 of the Clean Water Act, 33 U.S.C. § 1311, 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:

30. Respondent shall comply with the CWA.
31. Respondent shall not operate as a CAFO without an NPDES permit unless Respondent can design, construct, operate and maintain the Facility so that it does not discharge to a water of the United States. Specifically, as the Facility is currently designed and operated Respondent cannot confine more than 2,499 swine weighing 55 pounds or greater, and cannot confine more than 299 head of beef cattle.
32. Within sixty (60) days of the effective date of this Order, Respondent shall reduce and maintain the number of cattle and swine confined at the Facility below the regulatory threshold for a large and/or medium CAFO, unless the Facility can be managed in a

manner that prevents pollutant discharges into waters of the United States through a man-made ditch, flushing system, or other similar man-made device or Respondent applies for a NPDES permit that authorizes pollutant discharges to waters of the United States.

33. If Respondent cannot 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.
34. Within 30 days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken or will take to comply with the Clean Water Act and the terms of this Order.
35. Upon issuance of a NPDES Permit, Respondent shall comply with all terms contained therein.
36. If Respondent intends to construct runoff control structures to allow the confinement of cattle or swine above regulatory thresholds then beginning within thirty (30) days of 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.
37. Upon completion of 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.
38. On a quarterly basis for one year, Respondent shall submit to EPA copies of all inventory records that document the number of cattle and swine confined at the Facility as well as the pen ID/numbers in which they are held. The first quarterly report shall be submitted for the period October-December, 2013 on January 7, 2014, and subsequent reports shall be submitted on April 7, 2014, July 7, 2014, and October 7, 2014.

General Provisions

Opportunity to Confer

39. This Order shall become effective 30 days after its receipt by Respondent. 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 the Order to Respondent. Within ten days of receipt of this Order, Respondent may request 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.
40. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 46.

Effect of Order

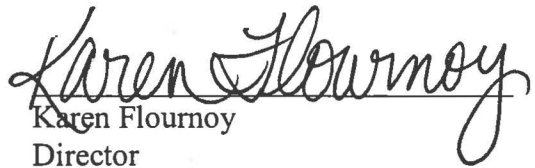
41. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits. Respondent has the right to seek immediate federal judicial review of the Order pursuant to 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.
42. 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.
43. 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.
44. 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.

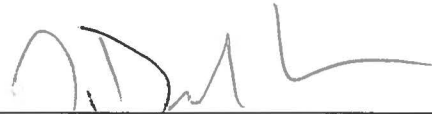
45. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
46. All submissions to the EPA required by this Order shall be sent to:

Don Hamera
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.
47. 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.
48. 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 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).
49. The Effective Date of this Order shall be 30 days following Respondent's receipt of the Order. The terms of this Order shall become effective and enforceable against Respondent upon the Effective Date.

Date 10-17-13



Karen Flournoy
Director
Water, Wetlands and Pesticides Division



J. Daniel Breedlove
Senior 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 address:

Travis Klaassen
5288 130th Street
Sibley, Iowa 51247.

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:

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

A handwritten signature in black ink, appearing to read "J. D. ...", is written over a horizontal line.

10/21/13
Date