

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

2018 APR -3 AM 9: 28

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	)	
	)	
KENNETH VENNER	)	Docket No. CWA-07-2018-0062
d/b/a KENNETH VENNER FEEDLOT	)	
	)	
Respondent	)	CONSENT AGREEMENT/ FINAL ORDER
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and Kenneth Venner (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). Thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”).

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that the Respondent discharged pollutants into a water of the United States without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

**Parties**

3. Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, and re-delegation is the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. Respondent operates a Concentrated Animal Feedlot Operation located in Arcadia, Carroll County, Iowa.

#### **STATUTORY AND REGULATORY AUTHORITY**

5. Section 101(a) of the CWA, 33 U.S.C. § 1251(a), states that the objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the terms "discharge of a pollutant" and "discharge of pollutants" as, *inter alia*, any addition of any pollutant to navigable waters from any point source.

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term "pollutant" as, *inter alia*, biological materials and agricultural waste discharged to water.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as, *inter alia*, the "waters of the United States," as defined at 40 C.F.R. § 122.2.

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" 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."

11. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as, *inter alia*, any individual, corporation, partnership, or association.

12. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that section.

13. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.

14. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 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," as those terms are defined at 40 C.F.R. § 122.2.

15. Pursuant to 40 C.F.R. § 122.23(a), “concentrated animal feeding operations,” or “CAFOs,” are point sources subject to NPDES permitting requirements.

16. “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 or Medium CAFO in accordance with 40 C.F.R. § 122.23(b).

17. “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.

18. “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 where 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.

19. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

20. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) 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.”

21. “Production area” is defined by 40 C.F.R. § 122.23 as 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.

22. The Iowa Department of Natural Resources (IDNR) is the state agency authorized to administer the federal NPDES program in the state of Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **FACTUAL BACKGROUND AND FINDING OF VIOLATION**

23. Respondent owns or operates an animal feeding operation (“the Facility”) that is located in the Northeast ¼ of Section 12 of Township 84 North, Range 36 West, in Carroll County, Iowa, and has a street address of 17179 Granite Avenue, Arcadia, Iowa.

24. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

25. On or about September 28, 2016, EPA personnel conducted a compliance evaluation inspection of the Facility (“the EPA inspection”).

26. At the time of the EPA inspection, the Facility was confining approximately 692 head of beef cattle. Based on information gathered during EPA inspection and IDNR records, Respondent has consistently confined at least 300 head of beef cattle at the Facility.

27. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility’s confinement areas at times relevant to this Order.

28. The Facility confined and fed or maintained cattle for a total of 45 days or more in any twelve-month period relevant to this Order.

29. The Facility is an “animal feeding operation” or “AFO” within the meaning of 40 C.F.R. § 122.23(b)(1).

30. The Facility is a “concentrated animal feeding operation” or “CAFO” within the meaning of 40 C.F.R. § 122.23(b)(2).

31. The Facility is a “Medium CAFO” within the meaning of 40 C.F.R. § 122.23(b)(6).

32. The Facility is a “point source” within the meaning of 40 C.F.R. § 122.23(a) and Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. The EPA inspector observed that the Facility lacks adequate engineered livestock waste control facilities to prevent discharges of manure and process wastewater. Analysis of sampling conducted by the EPA inspector documented that feedlot-related pollutants discharge into the unnamed tributary of the Middle Raccoon River.

34. The inspector observed that road culverts facilitate the discharge of manure and process wastewater into Middle Raccoon River and its tributaries. The road culverts are “man-made ditches, flushing systems or similar man-made devices,” as included in the definition of Medium CAFO in 40 C.F.R. § 122.23(b)(6).

35. Manure and process wastewater discharged from the Facility are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

36. The Middle Raccoon River and its tributaries are “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, “navigable waters” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

37. The Middle Raccoon River is listed by the State of Iowa as impaired for nitrates and E. coli.

38. Respondent did not have an NPDES permit authorizing the discharge of pollutants from the Facility.

39. Based on the size of the Facility, the presence of the culverts that facilitate pollutant discharges, and the proximity of the Facility to the Middle Raccoon River and its tributaries, process wastewater containing pollutants from production areas at the Facility will continue to flow into the Middle Raccoon River and its tributaries as a result of significant precipitation events.

40. The flow of process wastewater from the Facility to the Middle Raccoon River and its tributaries constitute unauthorized discharges of pollutants from a point source to waters of the United States. This discharge violates Section 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

### **CONSENT AGREEMENT**

41. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

42. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

43. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

44. Respondent and Complainant each agree to bear their own costs and attorney’s fees.

45. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

46. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

47. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 402 of the CWA.

48. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 47 above, of this CA/FO.

### **PENALTY**

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

49. Respondent shall pay a civil penalty of Nine Thousand Dollars (\$9,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Lisa Haugen  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Chris Muehlberger  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7

11201 Renner Boulevard  
Lenexa, Kansas 66219.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

50. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### Reservation of Rights

51. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

52. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

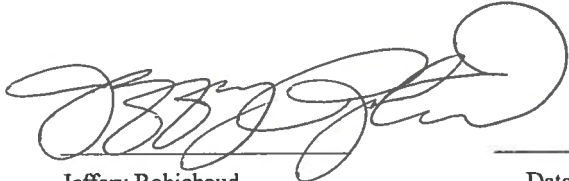
#### Parties Bound

53. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

#### Effective Date

54. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

  
Date 3/30/18  
Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division

  
Date 3.29.18  
Chris Muehlberger  
Assistant Regional Counsel

RESPONDENT:

  
KENNETH VENNER

12-19-17  
Date

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.



**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

*Karina Bonomeo*

REGIONAL JUDICIAL OFFICER

*KB*  
~~MA~~ April 3, 2018

Date

IN THE MATTER OF  
Kenneth Venner d/b/a Kenneth Venner Feedlot  
Docket No. CWA-07-2018-0062

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

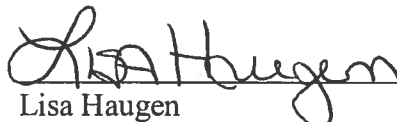
Copy emailed to Attorney for Complainant:

Muehlberger.christopher@epa.gov

Copy by First Class Mail to Attorney for the Respondent:

Mr. Eldon McAfee, Esq.  
Brick Gentry, P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, IA 50266-7703

Dated: April 3, 2018

  
\_\_\_\_\_  
Lisa Haugen  
Hearing Clerk, Region 7