

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

**BEFORE THE ADMINISTRATOR**

<b>IN THE MATTER OF:</b>	)	
	)	<b>Docket No. CWA-07-2017-0370</b>
<b>CINDY STRATMAN</b>	)	
	)	<b>FINDING OF VIOLATION AND</b>
<b>Respondent</b>	)	<b>ORDER FOR COMPLIANCE</b>
	)	<b>ON CONSENT</b>

**PRELIMINARY STATEMENT**

1. The following Findings of Violation are made and Administrative 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. Cindy Stratman, (“Respondent”), operates an animal feeding operation (“Facility”) that is located in Section 11 of Township 22 North, Range 6 East, in Cuming County, Nebraska, and has a street address of 1140 Highway 9, West Point, Nebraska.

3. It is the Parties’ intent through entering into the Order to address noncompliance by Respondent in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

4. By entering into the Order, Respondent: (1) consents to and agrees not to contest EPA’s authority or jurisdiction to issue or enforce the Order; (2) agrees to undertake all actions required by the terms and conditions of the Order; and (3) consents to be bound by the requirements set forth herein.

5. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in the order, except that Respondent admits the jurisdictional allegations herein.

6. Respondent waives any and all remedies, claims for relief and otherwise available rights to jurisdictional or administrative review that Respondent may have with respect to any issue of fact or law set forth in the Order, including, but not limited to, any right of judicial review of the Order under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

## STATUTORY AND REGULATORY AUTHORITY

7. 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.

8. 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.

9. 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.

10. 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.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “waters of the United States,” as defined at 40 C.F.R. § 122.2, which includes, *inter alia*, tributaries to intrastate rivers and streams.

12. 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.”

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

14. 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.

15. 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.

16. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122.

17. 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.

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

19. “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).

20. “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.

21. “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.

22. “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.”

23. “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.

24. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency authorized to administer the federal NPDES program in the state of Nebraska 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**

25. Respondent owns or operates an animal feeding operation (“the Facility”) that is located in Section 11 of Township 22 North, Range 6 East, in Cuming County, Nebraska, and has a street address of 1140 Highway 9, West Point, Nebraska.

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

27. On April, 19, 2017, EPA personnel conducted a compliance evaluation inspection of the Facility (“the EPA inspection”).

28. At the time of the EPA inspection, the Facility was confining approximately 675 head of beef cattle in four open confinement lots. Based on information gathered during EPA inspection and state inspection records, Respondent has confined at least 600 or more head of beef cattle at the Facility at all times relevant to this Order.

29. 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.

30. 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.

31. 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 an unnamed tributary of Plum Creek. Plum Creek discharges into the Elkhorn River, which is listed as impaired by the State of Nebraska for *Escherichia coli* (“E. coli”), a disease-causing type of fecal coliform bacteria passed through the fecal excrement of livestock and associated with discharges from CAFOs.

32. The inspector observed that process waste water discharges from the facility's feedlots to north and south solids settling basins (“SSB”). Process wastewater is discharged from the SSBs to vegetative filter strips (“VFS”). The VFS discharges by sheet flow to a road ditch and into an unnamed tributary of Plum Creek. The road ditch is a “manmade device” as proposed in 40 C.F.R. § 122.23(b)(6). The north VFS discharges by sheet flow into an unnamed tributary of Plum Creek. Both the north and south VFSs were observed to be heavily thatched and comprised of dead vegetation. Manure solids and process wastewater had flooded out the end of VFSs.

33. 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).

34. The unnamed tributary to Plum Creek is a “water 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).

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

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

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

38. 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).

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

40. Analysis of samples collected during the inspection documented that pollutants, including E. coli, discharge from the Facility into the unnamed tributary to Plum Creek.

41. Based on the size of the Facility, the presence of the road ditch that facilitates pollutant discharges, and the proximity of the Facility to an unnamed tributary of Plum Creek, process wastewater containing pollutants from production areas at the Facility will continue to flow intermittently into an unnamed tributary to Plum Creek as a result of significant precipitation events.

42. The intermittent but continuing flow of process wastewater from the Facility to an unnamed tributary to Plum Creek constitutes an unauthorized discharge 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.

### **ORDER FOR COMPLIANCE ON CONSENT**

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 and AGREES to take the following actions to eliminate violations of the CWA:

43. Respondent shall comply with the CWA.

44. If Respondent cannot cease all discharges from the Facility through a man-made ditch, flushing system, or other similar man-made device into 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.

45. Within 30 days of the Effective Date of this Order, Respondent shall inform EPA in writing of all actions that Respondent has taken or will take to comply with the CWA and the terms of this Order.

46. Within 180 days of the Effective Date of this Order, Respondent shall reduce the number of cattle confined at the Facility below the Medium CAFO regulatory threshold of 300 head of beef cattle, unless:

(a) the Facility can be managed in a manner that prevents the discharge of pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(b) Respondent applies for a NPDES permit that authorizes pollutant discharges to waters of the United States.

47. If Respondent intends to apply for a NPDES permit that authorizes the discharge of pollutants, then upon issuance of that permit Respondent shall comply with all terms contained therein.

48. If Respondent intends to construct runoff control structures that enable confinement of beef cattle above regulatory thresholds, then Respondent shall submit written monthly progress reports to EPA beginning within 60 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 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 or will be addressed.

49. Upon completion of runoff control structures, Respondent shall submit to EPA a Notice of Construction Completion certified by a professional engineer within 30 days of the completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

#### General Provisions

50. 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.

51. Compliance with the terms of this Order shall neither relieve Respondent of liability for any violations of the CWA nor preclude EPA from initiating an administrative or civil judicial enforcement action to recover penalties or seek additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319, for such violations.

52. Nothing in this Order shall limit EPA's right to obtain access to and/or inspect the Facility and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

53. 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.

54. All submissions to EPA required by this Order shall be sent to:

Erin Kleffner  
Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

55. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the information submitted that is entitled to confidential treatment and which is not effluent data. For any such claim, Respondent must describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separately enclosed 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 Clean Water Act appear in 40 C.F.R. § 2.302.

56. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to civil penalties for each day of violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; or civil action in federal district court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

**RESPONDENT**  
**CINDY STRATMAN LIVESTOCK**

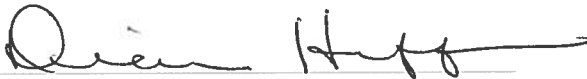
Date: July 17, 2018

Cindy Stratman  
Cindy Stratman




**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 7-31-18

  
for Jeffery Robichaud  
Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7

Date: 8.1.18

  
Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7

**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:

Ms. Cindy Stratman  
1140 Highway 9  
West Point, Nebraska 68788

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:

Mr. Blake Onken  
Section Supervisor  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
PO Box 98922  
Lincoln, Nebraska 68509



Name



Date