

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

) Docket No. CWA-07-2004-0024

Echo-L, Inc.)

Fulton, Missouri)

Respondent)

) FINDINGS OF VIOLATION
) ORDER FOR COMPLIANCE

Proceedings under)

Section 309(a)(3))

of the Clean Water Act,)

33 U.S.C. § 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 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 VII, and redelegated to the Director of Region VII’s Water, Wetlands, and Pesticides Division.
2. The Respondent is Echo-L, Inc., who operates an animal feeding operation located in the NE1/4, SW 1/4, Section 31, T48N, R9W, Callaway County, Missouri.

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. 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.

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, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under C.F.R. Part 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” 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” is defined by 40 C.F.R. § 122.23(b)(3) as “an ‘animal feeding operation’ which meets the criteria in appendix B of this part.”
11. Appendix B to 40 C.F.R. § 122.23 states that an animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if the animal feeding operation confines more than 200 mature dairy cattle, and pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made device.
12. “Waters of the United States” are defined in 40 C.F.R. Part 122.2 to include intrastate rivers and streams, and tributaries thereto.
13. The Missouri Department of Natural Resources (“MDNR”) is the agency within the State of Missouri with the delegated authority to administer the federal NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between the United States EPA and MDNR. The EPA maintains concurrent enforcement authority with delegated state NPDES programs for

violations of the CWA.

14. The regulations promulgated by the Missouri Department of Natural Resources that apply to concentrated animal feeding operations are set forth at 10 CSR 20-6.300. These regulations define man-made conveyance as follows:

A device constructed by man and used for the purpose of transporting wastes, wastewater, or storm water into waters of the state. This includes, but is not limited to, ditches, pipes, gutters, emergency overflow structures, grass waterways, constructed wetland treatment systems, overland flow treatment systems, or similar systems.

Factual Background and Findings of Violation

15. Respondent is a corporation and is therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.
16. Respondent operates an animal feeding operation ("Facility") located in NE1/4, SW 1/4, Section 31, T48N, R9W, Callaway County, Missouri.
17. The Facility consists of two confinement farms on contiguous land. The older facility will hereinafter be referred to as "ECHO-L1" the newer facility will hereinafter be referred to as "ECHO-L2."
18. Animal wastes and runoff from the confined feeding areas at the Facility are collected and stored in ECHO-L1 and ECHO-L2 lagoons until they are disposed of through land application to croplands. Any discharges from the Facility would flow to an unnamed tributary of Stinson Creek or an unnamed tributary of Smith Branch.
19. On February 12, 2003, EPA conducted an NPDES inspection of Respondent's Facility.
20. At the time of the inspection, Respondent confined approximately 500 dairy cattle at the Facility. Since at least September 2001, Respondent has confined and fed more than 200 mature dairy cattle at the Facility.
21. Since at least September 2001, Respondent has confined and fed or maintained dairy cattle at the Facility for a total of forty-five (45) days or more during the previous twelve months.
22. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over

any portion of the Facility at the time of inspection.

23. In 1997, a transfer pipe at the Facility became clogged, resulting in the discharge of wastewater to Smith Branch. At the time, Respondent did not have an NPDES permit for the Facility.
24. Respondent subsequently applied to MDNR for an NPDES permit for a concentrated animal feeding operation, and MDNR issued an NPDES permit for a concentrated animal feeding operation, No. MO-G010552, to Echo-L effective February 23, 2001. The permit is scheduled to expire February 22, 2006.
25. Respondent operates a “concentrated animal feeding operation” as defined by 40 C.F.R. § 122.23(b)(3).
26. The Facility is a “point source” as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
27. Respondent’s NPDES permit states that the permittee shall not allow a discharge to waters of the state except during storms exceeding the design storm event. The design storm event is defined by Respondent’s NPDES permit as as the 25-year, 24-hour storm (5.60 inches of rain); the 10-year, 10-day storm(7.62 inches of rain), the 10-year, 365-day rainfall; and the 10-year, 365-day rainfall minus evaporation
28. At the time of the EPA inspection in February 2003, manure-laden wastewater was flowing from the lagoon at the ECHO-L2 portion of the Facility and was being discharged into an unnamed tributary of Stinson Creek.
29. The wastewater discharge observed by the EPA inspector from the ECHO-L2 lagoon into the unnamed tributary of Stinson Creek did not result from a design storm event.
30. Analysis of water samples taken by the EPA inspector from the unnamed tributary of Stinson Creek at the time of the February 12, 2003 inspection show that the discharge of wastewater from the Facility caused violations of general and specific criteria of the Missouri Water Quality Standards.
31. The unnamed tributary of Stinson Creek and Stinson Creek are waters of the U.S. as defined by 40 C.F.R. § 122.2.
32. During the February 2003 EPA inspection, the EPA inspector observed evidence of two previous discharges from the ECHO-L2 lagoon to an unnamed tributary of Stinson Creek.

Respondent has indicated these discharges probably occurred in the spring of 2002.

33. Rainfall records maintained by the Respondent show that these prior discharges did not result from a design storm event.
34. Respondent's discharge of manure-laden wastewaters from the Facility lagoon to waters of the United States in spring 2002 and February 2003 were unauthorized discharges of pollutants from a point source to waters of the United States, in violation of NPDES Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.
35. Respondent's NPDES permit requires that Respondent report discharges occurring other than during a 25-year, 24-hour storm event or larger 24-hour event to MDNR within 24 hours.
36. Respondent did not report to MDNR the discharge observed by the EPA inspector on February 12, 2003.
37. Respondent failed to report to MDNR the discharges at the Facility which Respondent indicate occurred in spring 2002.
38. Respondent's failure to report the three aforementioned unauthorized discharges of manure-laden wastewaters to MDNR within 24 hours is in violation of Permit MO-G010552, Sections 301(a) and 402 of the CWA, and implementing regulations.
39. Respondent's NPDES permit specifies that the maximum operating level for uncovered storage structures at the Facility is one foot below the emergency overflow level.
40. Respondent's NPDES permit also provides that a construction permit or construction letter of approval is required prior to modification of the waste handling facilities.
41. Immediately prior to the EPA inspection in February 2003, the liquid level of the ECHO-L2 lagoon was less than one foot below the emergency overflow level. Respondent blocked the ECHO-L2 emergency spillway with a 1.5 foot pile of dirt, thereby increasing the capacity of the lagoon beyond the maximum operating level and increasing the risk of berm failure.
42. Respondent did not obtain MDNR approval before modifying the lagoon by blocking the emergency spillway.

43. Respondent's modification of the waste handling facility by blocking the emergency spillway at the ECHO-L2 lagoon without obtaining prior approval from MDNR is a violation of NPDES Permit MO-G010552, Sections 301(a) and 402 of the CWA, 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 violations of NPDES permit conditions and the CWA:

44. In order to prevent further unauthorized discharges, Respondent shall ensure that wastewater levels in storage structures are in compliance with the storage structure operating levels of Respondent's NPDES permit. On an ongoing basis, Respondent shall remove wastewater from the storage structures in a timely manner, so that the Facility remains in continuous compliance with storage structure operating level requirements. When removing wastewater from the storage structures, Respondent shall comply with all applicable requirements regarding proper land application of wastewater.
45. On a quarterly basis for one year, Respondent shall submit to EPA copies of all lagoon level, precipitation, and land application records that Respondent is required to keep pursuant to Respondent's NPDES permit. The first quarterly report shall be submitted to EPA on January 1, 2004, and subsequent reports shall be submitted on April 1, 2004, July 1, 2004, and October 1, 2004.

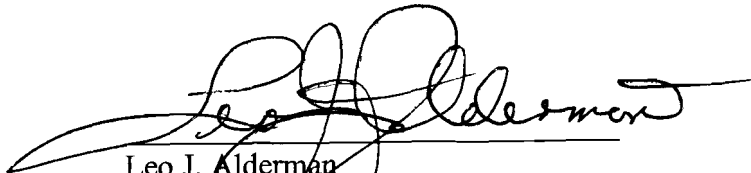
Effect of Order

46. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.
47. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state and/or federal permits.
48. Nothing in this Order shall limit 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.

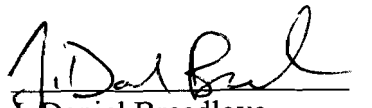
49. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.
50. 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.
51. All submissions to EPA required by this Order shall be sent to:
- Paula Higbee
CAFO Enforcement Coordinator
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency – Region VII
901 North 5th Street
Kansas City, Kansas 66101
52. 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 Clean Water Act appear in 40 C.F.R. § 2.302.
53. 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 \$27,500 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).

54. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date 12/1/03



Leo J. Alderman
Director
Water, Wetlands, and Pesticides Branch



J. Daniel Breedlove
Assistant Regional 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 VII. 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, small business assistance information, and a Business Organization Ability to Pay Claim form, to the following:

Mr. Tim Echelmeier
Echo-L Inc.
4651 State Road HH
Fulton, Missouri 65251-3739

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 Missouri:

Mr. Kevin Mohammadi
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

1-13/03
Date

