

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

ONKEN FEEDLOTS L.L.P.
CARROLL, IOWA

Respondent

Proceedings under
Section 309(a)(3)
of the Clean Water Act,
33 U.S.C. § 1319(a)(3)

)
) Docket No. CWA-07-2008-0076

)
) 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. The Respondent is Onken Feedlot who owns and operates an animal feeding operation permitted to confine 4,200 head of cattle near Carroll, 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. 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. § 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.
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)(3).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines 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 pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and IDNR. EPA

maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background

14. Respondent owns and operates an animal feeding operation ("Facility") that is located in the Southwest ¼ of the Southeast ¼ of Section 21, Northwest ¼ of the Northeast ¼ Section 28 of Township 85 North, Range 34 West, in Carroll County, Iowa.
15. On May 29, 2008, EPA personnel conducted a compliance evaluation inspection 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), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
19. At the time of the EPA inspection, the Facility was confining approximately 2,200 head of beef cattle. The number of beef 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).
20. Respondent is currently operating under a conditional 2 year Alternative Technology NPDES permit which was issued on May 23, 2007 and expires on May 22, 2009.
21. Runoff from the north feedlot Vegetative Infiltration Basin (VIB) was discharging under 140th Street and flowing south and east into a field which then flowed into an unnamed tributary to Buck Run.
22. The unnamed tributary and Buck Run are both waters of the United States, as defined under 40 C.F.R. Part 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste from the north feedlot VIB to Buck Run and its tributaries.
24. Based on the size of the Facility, the distance from the Facility to Buck Run, and the slope and condition of the land across that distance, wastewater containing pollutants

from the north feedlot VIB will continue to flow into Buck Run during precipitation events less than a 25 year, 24 hour storm event.

Findings of Violation

Count 1

25. Respondent's NPDES permit requires Respondent to control livestock or related wastes in a manner capable of preventing water pollution. Sections 301 and 402 of the CWA prohibit discharges into "Waters of the United States" except pursuant to a NPDES permit.
26. During the EPA inspection referenced in paragraph 15 above, inspectors observed discharges from the north feedlot VIB. Manure solids and process waste water effluent flowed into, through, and out of the north VIB during the inspection. The effluent then discharged under 140th street and flowed south and east into a field and then flowed into an unnamed tributary to Buck Run.
27. The flow of wastewater from Respondent's Facility during significant rain events to Buck Run and its tributaries constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Respondent's NPDES permit and a violation of Sections 301 and 402 of the CWA.

Count 2

28. Respondent's NPDES permit requires Respondent to establish a densely populated grass or other forage in the Vegetative Treatment Area (VTA) channels and VIB. Additionally, the permit requires that vegetation must be established before introducing manure, settled open feedlot effluent, and process wastewater runoff into those areas.
29. During the EPA inspection referenced in paragraph 15 above, inspectors observed no vegetation established in the VIB and the VTAs. Inspectors also observed the release of process wastewater into the VIB and south VTA.
30. Respondent's failure to establish densely populated grass or other forage in its VTAs and VIB, and the introduction of process wastewater into the VIB and VTAs before vegetation was established, is a violation of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA.

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:

31. Respondent shall immediately comply with the CWA by immediately ceasing discharges or removing cattle from all areas within the Facility where runoff is not controlled in a manner to prevent discharges to waters of the United States. If cattle cannot be confined 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 30 calendar days of Respondent's receipt 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 discharges to waters of the United States and maintains compliance with the CWA.
32. If Respondent cannot immediately cease all discharges from the Facility to waters of the United States, regardless of whether the number of cattle is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose manure from areas that cannot be controlled in a manner to prevent discharges.
33. Within thirty (30) days of the effective date of this Order, Respondent shall inform the EPA, in writing, of all actions that Respondent has taken to comply with the CWA and the terms of this Order.
34. Respondent shall comply with all terms contained in the NPDES permit for the Facility therein including terms related to the construction and operation of livestock waste controls. This includes, but is not limited to; preventing the introduction of effluent to the VIB and VTAs until densely populated grass or other forage is established. Respondent shall also maintain and submit records to IDNR as required by the NPDES permit.
35. If Respondent intends to construct runoff control structures to allow the confinement of cattle above regulatory thresholds (including completion of alternative technologies), then beginning thirty (30) days after 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.

36. Upon completion of the 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.

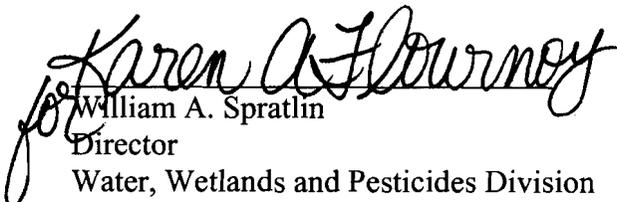
Effect of Order

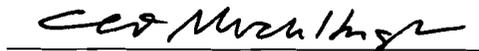
37. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
38. 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.
39. 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.
40. 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.
41. 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.
42. All submissions to EPA required by this Order shall be sent to:

Donald Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
901 North 5th Street
Kansas City, Kansas 66101.

43. 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.
44. 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 \$32,500 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).
45. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

Date Sept. 5, 2008


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Chris Muehlberger
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 to:

Mr. Rick Onken
Onken Feedlots L.L.P.
24568 140th Street
Carroll, Iowa 51401

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. Dan Stipe, Supervisor
Iowa Department of Natural Resources
Field Office 4
1401 Sunnyside Lane
Atlantic, Iowa 50022

Mr. Kenneth Hessenius, Enforcement Coordinator
Iowa Department of Natural Resources
1900 North Grand Avenue
Spencer, Iowa 51301

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9/5/08
Date