

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

AARON MAASSEN)	
LEE MAASSEN)	
)	Docket No. CWA-07-2009-0113
D/B/A MAASSEN & SONS FEEDLOT)	
SIoux COUNTY, IOWA)	
)	
Respondents)	FINDING OF VIOLATION
)	ORDER FOR COMPLIANCE
)	
)	
Proceedings under)	
Sections 308(a) and 309(a)(3))	
of the Clean Water Act,)	
33 U.S.C. §§ 1318(a) and 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 308(a) and Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 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. Aaron Maassen and Lee Maassen ("Respondents"), doing business as Maassen & Sons Feedlot, own and/or operate an animal feeding operation located in the East ½ of the NE ¼ of Section 15 in Township 94 North, Range 45 West, in Sioux 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. 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 502(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 Chapter 40 of the Code of Federal Regulations (“40 C.F.R.”) Part 122. Under 40 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(6) 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(14), 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.”
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)(4).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as, or more than, “700 mature dairy cows, whether milked or dry.”
12. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, an owner or operator of a CAFO must seek coverage under a NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur. 40 C.F.R. § 122.23(d)(1).
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. The Iowa Department of Natural Resources (“IDNR”) is the agency within the state of

Iowa authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

Factual Background and Findings of Violation

15. Respondents own and/or operate an animal feeding operation ("Facility") located in the East ½ of the Northeast ¼ of Section 15 in Township 94 North, Range 45 West, in Sioux County, Iowa.
16. The Facility confines and feeds or maintains livestock for a total of 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).
19. Inspectors from EPA inspected the Facility on April 23, 2009 to determine its compliance with the CWA.
20. At the time of the April 23, 2009 inspection, the Facility was confining approximately 803 head of dairy cattle. The number of dairy cattle confined and fed at the Facility is greater than 700; therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
21. Respondents applied for an NPDES permit on March 3, 2009, but at the time of the April 23, 2009 inspection, Respondents did not have an NPDES permit for the Facility. IDNR issued Respondents a draft NPDES permit on June 3, 2009.
22. Manure, litter, or process wastewater from Respondents' Facility flows through several different discharge paths into an unnamed tributary of the Orange City Slough, a perennial stream. The tributary flows approximately 3/4 of a mile past the Facility to its confluence with the Orange City Slough.
23. Both the Orange City Slough and its unnamed tributary are waters of the United States, as defined by 40 C.F.R. § 122.2.
24. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the Orange City Slough and its tributary.

25. Based on the size of the Facility, the distance from the Facility to the unnamed tributary and to the Orange City Slough, and the slope and condition of the land across that distance, manure, litter, or process wastewater containing pollutants from open feeding areas at the Facility will discharge into the unnamed tributary and the Orange City Slough as a result of significant precipitation events.
26. The intermittent flow of manure, litter, or process wastewater from Respondents' Facility to the unnamed tributary and the Orange City Slough constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

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), Respondents are hereby ORDERED to take the following actions to eliminate their violations of the CWA:

27. Respondents shall immediately comply with the CWA by ceasing discharges or removing livestock from all areas within the Facility where manure, litter, or process wastewater is not controlled in a manner that prevents discharges to waters of the United States. If livestock cannot be confined at the Facility in a manner that prevents discharges to waters of the United States, then Respondents shall reduce the number of livestock confined at the Facility below regulatory thresholds within thirty (30) calendar days. Respondents shall not repopulate livestock 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.
28. Regardless of whether the number of livestock is reduced below regulatory thresholds, if Respondents cannot immediately cease all discharges from the Facility to waters of the United States, then Respondents shall immediately remove and properly dispose of manure from areas that cannot be controlled in a manner to prevent discharges.
29. Within forty (40) days of the effective date of this Order, Respondents shall inform EPA, in writing, of all actions that Respondents have taken to comply with the CWA and the terms of this Order.
30. Upon issuance of its final NPDES Permit, Respondents shall comply with all terms contained therein, including terms related to the construction and operation of livestock waste controls.

31. If Respondents intend to construct manure, litter, or process wastewater control structures to allow the confinement of cattle above regulatory thresholds, Respondents shall submit written monthly progress reports to EPA within forty (40) days of the effective date of this Order and continuing monthly on the seventh day of each month until Respondents submit 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/will be addressed.
32. Respondents shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completing construction of the manure, litter, or process wastewater control structures. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
33. Upon receipt of this Order and continuing until such time as Respondents are issued a final NPDES Permit for the Facility, Respondents shall perform the following monitoring and recordkeeping activities: 1) maintain land application records, including dates, location, amounts applied, and application rates; 2) maintain precipitation records; and, if applicable, 3) record and maintain storage facility liquid levels after every event that has the potential to change the amount of liquid in the storage facility. Respondents shall submit copies of these records to EPA on a quarterly basis for the periods of September-November, December-February, March-May, and June-August. Records must be submitted on or before the seventh day of the month following the end of the period (December 7, March 7, June 7, and September 7). Upon issuance of an NPDES permit, Respondents shall maintain and submit records as required by the NPDES permit.

Effect of Order

34. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state and/or federal permits.
35. Compliance with the terms of this Order for Compliance shall not relieve Respondents of liability for an administrative or judicial enforcement action to recover penalties for any violations of the CWA, nor shall compliance with this Order preclude EPA from initiating such an action or from seeking additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

36. Nothing in this Order shall limit EPA's right to obtain access to and/or inspect Respondents' Facility, or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
37. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.
38. If any provision or authority of this Order or the application of this Order to Respondents is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
39. All submissions to EPA required by this Order shall be sent to:

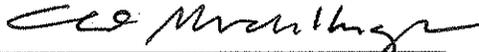
Don Hamera
CAFO Enforcement Program
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

40. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondents 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. To make 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 permitted by the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.
41. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondents to (1) civil penalties of up to \$37,500 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).

42. The terms of this Order shall be effective and enforceable against Respondents upon Respondents' receipt of the Order.

9-1-09
Date


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Christopher Muehlberger
Assistant Regional Counsel

CERTIFICATE OF SERVICE

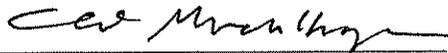
I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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:

Mr. Aaron Maassen
Maassen & Sons Feedlot
4733 Hickory Avenue
Maurice, Iowa 51036.

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:

Ken Hessenius
Iowa Department of Natural Resources
Gateway North, Suite E17
Spencer, Iowa 51301.



Christopher Muehlberger

9.2.09

Date