

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5th Street

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-07-2002-0171

Charles Blount)

d.b.a. Blount Turkey Farm)

Lawrence County, Missouri)

Respondent)

) FINDING 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 Charles Blount, d.b.a. Blount Turkey Farm (Respondent), who owns and operates an animal feeding operation ("Facility") located near Mt. Vernon in Lawrence 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 55,000 turkeys and has a liquid manure handling system, unless the animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.
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 CWA, implementing regulations, and a Memorandum of Understanding between EPA and MDNR. EPA maintains concurrent enforcement authority with delegated state NPDES program for violations of the CWA.

Factual Background and Findings of Violation

14. Respondent is an individual and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
15. Respondent owns and operates an animal feeding operation ("Facility") located near Mt. Vernon in Lawrence County Missouri.
16. On March 5, 2002, EPA conducted an NPDES inspection of Respondent's Facility.
17. At the time of the inspection, the Facility confined approximately 96,000 turkeys.
18. The Facility confines and feeds or maintains turkeys for a total of forty five (45) days or more in any twelve-month period.
19. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility at the time of inspection.
20. Turkeys are confined and fed at three units at the Facility. Each unit consists of a brood barn, an intermediate barn, several finishing barns and a composteur. Flocks are changed out or transferred between buildings several times a year, and accumulated litter in the buildings is typically cleaned out when the flocks are changed out.
21. During an inspection conducted by MDNR on January 23, 2002, the MDNR inspectors found litter and manure cake from cleanout of the Facility stockpiled outside, uncovered and in the open for over 14 days. The litter and manure cake piles were in areas where they would be exposed to direct precipitation and stormwater runoff.
22. On February 1, 2002, MDNR issued a Notice of Violation to Respondent, instructing Respondent to remove the exposed litter piles within 14 days. Respondent did not do so until March 3, 2002, failing to abide by MDNR's instruction in a timely manner.

23. Information obtained by the EPA inspector during the March 5, 2002 inspection shows that on several occasions during 2001, Respondent stockpiled litter from cleanout of the Facility in uncovered, exposed piles for extended periods of time. The storage of uncovered manure outside constitutes use of a crude liquid manure handling system.
24. The Facility confines over 55,000 turkeys and has a liquid manure handling system, and is therefore a "Concentrated Animal Feeding Operation" as defined by 40 C.F.R. § 122.23(b)(3), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
25. The Facility is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).
26. The turkey manure stored outside in exposed piles at Respondent's Facility is a biological waste that is a "pollutant" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
27. Any wastewater runoff originating from the Facility would flow generally in a westerly direction for a distance of approximately 1375-1875 meters (depending on which unit) to an unnamed tributary of a second unnamed tributary of White Oak Creek.
28. The slope of the land and soil and vegetation conditions between the manure piles and the unnamed tributary are such that any significant precipitation would result in runoff from the piles discharging biological wastes to the unnamed tributary and ultimately to White Oak Creek.
29. The unnamed tributaries and White Oak Creek are "waters of the United States" as defined by 40 C.F.R. Part 122.
30. On February 27, 2002, Respondent submitted to MDNR an application for an NPDES permit for its concentrated animal feeding operation. Prior to that date, Respondent did not have nor had he applied for an NPDES permit.
31. Respondent's unpermitted discharges of runoff containing pollutants from its Facility to the unnamed tributary to White Oak Creek during precipitation events which are less than a 25-year, 24-hour storm event are in violation of Section 301(a) 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 its violations of the CWA:

32. Immediately upon receipt of this Order, Respondent shall take all measures necessary to eliminate the discharge of animal waste to waters of the United States, including but not limited to ceasing all outside storage of animal wastes where the wastes can come into direct contact with precipitation or where stormwater runoff comes into contact with the wastes. Within thirty (30) days of receipt of this Order, Respondent shall provide written notice to EPA describing the measures it has taken to eliminate discharges.

Effect of Order

33. 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.
34. 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.
35. 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.
36. 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.
37. 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.

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

Paula Higbee
Compliance Officer
U.S. Environmental Protection Agency – Region VII
901 N. 5th Street
Kansas City, KS 66101

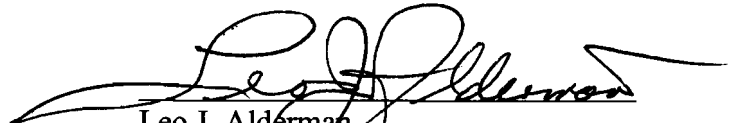
39. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. 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.

40. 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).

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



Date

7/16/02


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

Date

7/16/02


David Cozad
Associate Regional Counsel 

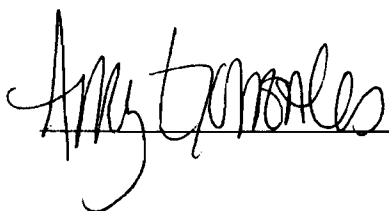
CERTIFICATE OF SERVICE

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 and small business assistance information, to the following:

Charles Blount
1200 E. Woodhurst
G-200
Springfield, MO 65804

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:

George Parsons
Southwest Regional Office
Missouri Department of Natural Resources
2040 W. Woodland
Springfield, MO 65807



7/17/02
Date _____