

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

Prime Feeders, Inc.	)	Docket No. CWA 07-2011-0047
	)	
	)	
Respondent	)	FINDINGS 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” or “Act”), 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. The Respondent, Prime Feeders, Inc. (“Respondent”), owns and/or operates an animal feeding operation located in the SE ¼ of Section 35 in Township 96 North, Range 12 West, in Chickasaw County, Iowa. The street address of the animal feeding operation is 2671 190<sup>th</sup> Street, New Hampton, Iowa. The operation is herein referred to as the Facility or Operation.

**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. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue National Pollutant Discharge Elimination System (“NPDES”) permits that, among other things, prescribe conditions whereby a discharge of pollutants may be authorized and

establish design, construction, operation, and maintenance requirements for the permit holder.

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. “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. Pollutant includes “process wastewater” which includes any water which comes in contact with, among other things, manure, litter or feed. *See* 40 C.F.R. § 122.23(b)(7).
7. “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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”
8. “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.
9. “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).
10. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
11. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must apply for an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. 40 C.F.R. § 122.23(d)(1).
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. "Process wastewater" is defined by 40 C.F.R. § 122.23 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."
14. The Iowa Department of Natural Resources ("IDNR") is the agency within the state of Iowa with the authorized authority 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. Respondent owns and operates a beef cattle feeding operation that is located in the SE ¼ of Section 35 in Township 96 North, Range 12 West, in Chickasaw County, Iowa. The street address of the Facility 2671 190<sup>th</sup> Street, New Hampton, Iowa.
16. On November 17, 2010, EPA personnel conducted a compliance evaluation inspection of the Facility. In addition to confinement barns, EPA inspectors observed an outdoor pen used to confine sick animals. EPA inspectors observed that this outdoor pen is exposed to precipitation, lacks adequate runoff control structures, and an unnamed tributary of Plum Creek is approximately 50 yards away and downgradient from the pens. EPA inspectors observed that manure and process wastewater from this pen will discharge to the tributary as a result of significant precipitation events. The unnamed tributary flows for approximately 1 mile southwest to Plum Creek, a perennial waterway.
17. During the November 17, 2010 inspection, EPA inspectors also observed manure in cattle alleyways and a mortality composting area that are exposed to precipitation, lack adequate runoff control structures, and that are in close proximity to and upgradient of an unnamed tributary of Plum Creek. EPA inspectors observed that manure and process wastewater from these areas will discharge to the tributary as a result of significant precipitation events.
18. Plum Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2.
19. The Facility confines and feeds or maintains beef cattle for a total of forty-five (45) days or more in any twelve month period.
20. Crops, vegetation, forage growth, and post harvest residues are not sustained over any

portion of the Facility's feeding areas.

21. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
22. At the time of the inspection Respondent was confining 1,802 head of beef cattle at the Facility.
23. At all times pertinent to this order, the number of beef cattle confined at the Facility was 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) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
24. The design, construction, operation, and/or maintenance of Respondent's facility resulted in the presence of cattle manure in areas exposed to precipitation which lacked adequate runoff controls and drainage features that facilitate the discharge of process wastewater into the Plum Creek and its tributaries.
25. Respondent has not applied for an NPDES permit for the Facility.
26. The presence of cattle and manure in areas exposed to precipitation, which lacked runoff controls to prevent the discharge of manure and process wastewater and the presence of drainage features that facilitate pollutant discharge into Plum Creek and its tributaries have resulted in conditions in which Respondent proposes to discharge manure and/or process wastewater to a water of the United States. Respondent has not applied for an NPDES permit as required by 40 C.F.R. § 122.23(d)(1). Respondent's failure to apply for an NPDES permit violates Sections 301, 308 and/or 402 of the Clean Water Act, 33 U.S.C. §§1311, 1318 and/or 1342, and implementing regulations.

### **Order For Compliance**

Based on the Findings of Violation set forth in paragraphs 15 through 26 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:

27. Respondent shall immediately and permanently address all conditions at the Facility that have created the duty for Respondent to apply for an NPDES permit. Specifically, Respondent shall design, construct, operate, and maintain the Facility in a manner so that the Facility does not discharge or propose to discharge manure or process wastewater to a water of the United States.

28. Within forty-five (45) days of the effective date of this Order, Respondent shall provide EPA with a written description and supporting documentation of the activities and procedures implemented to ensure that the Facility does not discharge or propose to discharge manure or process wastewater to a water of the United States.
29. If Respondent is unable to design, construct, operate, and maintain the Facility so the Facility does not discharge or propose to discharge manure or process wastewater to a water of the United States, Respondent shall apply for an NPDES permit for the Facility within thirty (30) days of the effective date of this Order. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the design, construction, operation, and maintenance of livestock waste controls.
30. If Respondent intends to apply for an NPDES permit and construct associated runoff controls then beginning thirty (30) days after receipt of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports 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.
31. Upon completion of any necessary control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

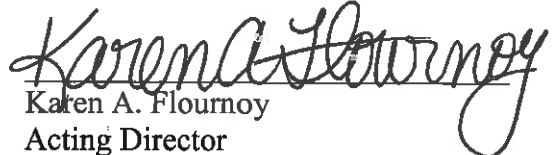
#### Effect of Order

32. 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.
33. 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.
34. 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.


35. 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.
36. 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.
37. All submissions to EPA required by this Order shall be sent to:
- Lantz Tipton  
CAFO Enforcement Program  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101
38. 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.
39. 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 \$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).

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

3/14/11  
Date

  
Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

3/10/11  
Date

  
J. Daniel Breedlove  
Assistant Regional Counsel

**CERTIFICATE OF SERVICE**

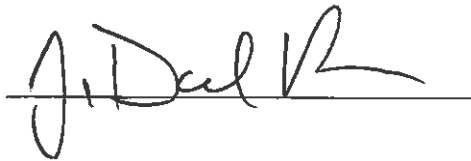
I certify that on the date noted below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 the following:

Dan Speicher  
Registered Agent: Prime Feeders, Inc.  
2631 190<sup>th</sup> Street  
New Hampton, IA 50659

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. Joe Sanfilippo  
Iowa Department of Natural Resources  
Field Office #1  
909 W. Main, Suite 4  
Manchester, Iowa 52057

  
\_\_\_\_\_

  
\_\_\_\_\_ Date