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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

)	
)	Docket No. CWA-07-2006-0247
)	
J-SIX FARMS, INC.)	
DONIPHAN COUNTY, KANSAS)	
)	
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 7, and redelegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.

2. The Respondent is J-Six Farms, Inc. (“J-Six Farms”) who owns and operates an animal feeding operation that confines approximately 1,200 swine each weighing more than 55 pounds near White Cloud, Kansas. The animal feeding operation (“Facility”) is located in Sections 5 and 8 of Township 1 North, Range 19 East in Doniphan County, Kansas.

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. Section 504(8) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the 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. To implement Section 402 of the CWA, the 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.
10. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
11. The Facility is located on tribal reservation lands within the State of Kansas. The EPA is the agency with the authority to administer the NPDES Program pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

Factual Background and Findings of Violation

12. Respondent owns and operates an animal feeding operation that is located in Sections 5 and 8 of Township 1 North, Range 19 East in Doniphan County, Kansas.
13. On or around June 23, 2005, the Facility discharged the entire contents (approximately 500,000 gallons) of the secondary hog-waste lagoon into Squaw Creek. The discharge resulted from a breach in the lagoon’s retention structure. The breach was caused by the erosion of the retention structure by liquid waste that spilled over the top of the structure.

The secondary retention lagoon contains wastes that are pumped through a pipe from the basement of the confinement building. The discharge of waste through the pipe and from the secondary lagoon was a discharge from a point source.

14. On June 28, 2005, EPA personnel conducted a compliance evaluation inspection of the Facility. At the time of the inspection, the inspector documented that the breach in the lagoon had been repaired by the Respondent.
15. Squaw Creek is a perennial stream that is adjacent to the Facility. The Creek is a tributary of the Missouri River. Squaw Creek is a water of the United States.
16. Respondent did not have a NPDES permit for the facility that would allow the discharge.
17. Respondent violated Section 301 of the CWA by discharging pollutants from a point source to waters of the United States without a NPDES permit.

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:

18. Respondent shall ensure that adequate freeboard, the distance between the liquid level and top of the storage structure, is maintained in storage structures to protect their integrity and prevent discharges to waters of the United States. Furthermore, Respondent shall properly operate and maintain all storage structures at the Facility.
19. On an ongoing basis, Respondent shall remove waste water from storage structures on days suitable for land application. Land application activities shall be conducted in a manner that prevents the discharge of feedlot related waste to waters of the United States. Respondent shall not apply liquid livestock wastes during a precipitation event, apply in quantities above agronomic rates, or apply when the ground is saturated.
20. Commencing upon the effective date of this Order and continuing for one year, Respondent shall maintain operational records of all lagoon levels, soil conditions, precipitation, and land application activity. Lagoon levels shall be documented at a minimum of the first and fifteenth day of the month and daily when adequate freeboard is exceeded. Respondent shall submit copies of these records to the EPA on a quarterly basis for the periods of October-December, January-March, April-June, July-September. Records must be submitted on or before the seventh day of the month following the end of the period (January 7, April 7, July 7, October 7).

21. Respondent shall ensure that each outdoor retention structure at the Facility contains a water level measurement device (staff gauge) to allow the accurate monitoring and recording of lagoon levels and freeboard.

Effect of Order

22. 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.
23. 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.
24. 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.
25. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the 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.
26. 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.

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

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

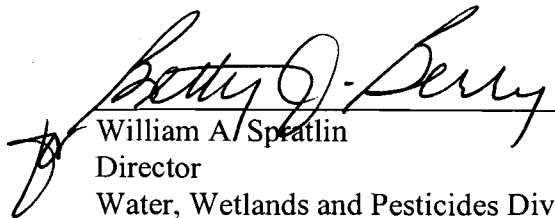
28. Pursuant to 40 C.F.R. § 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. 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 the EPA to release the submitted information to the public without further notice. The 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.

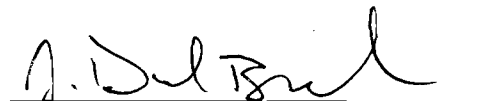
29. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

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

Date

08/07/06


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


J. Daniel Breedlove
Assistant Regional Counsel

CERTIFICATE OF SERVICE

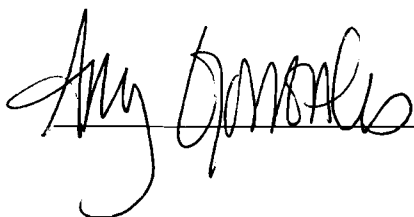
I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

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 and small business assistance information, to the following registered agent for J-Six Farms, Inc.:

John A. Kramer
Registered Agent for J-Six Farms, Inc.
32 South 6TH
Seneca, Kansas 66538-0000.

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 Iowa Tribe:

Leon Campbell, Chairman
Iowa Tribe of Kansas and Nebraska
3345 B Thrasher Road
White Cloud, Kansas 66094-9624.



8/9/06
Date _____