

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. CWA-07-2017-0204
KENNETH VENNER d/b/a)	
KENNETH VENNER FEEDLOT,)	
)	FINDING OF VIOLATION AND
Respondent.)	ORDER FOR COMPLIANCE
)	ON CONSENT
)	
)	

PRELIMINARY STATEMENT

1. The following Findings of Violation are made and Order for Compliance on Consent (Order) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

2. The Respondent in this case is Kenneth Venner d/b/a Kenneth Venner Feedlot (Respondent).

3. The EPA, together with the Respondent enter into this Section 309(a)(3) Order for the purpose of carrying out the goals of the CWA, 33 U.S.C. § 1251 et seq., to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the Parties’ intent through entering into this Order to address noncompliance by the Respondent in violation of the CWA. As set forth in this Order on Consent, the Parties have reached agreement regarding the timeframes for Respondent to attain compliance with the CWA.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) Order on Consent, (2) agrees to undertake all actions required by the terms and conditions of this Order on Consent, and (3) consents to be bound by the requirements set forth herein. Respondent neither admits nor denies the specific factual allegations or Findings of Violation in this Order on Consent, except that Respondent admits the jurisdictional allegations herein solely for the purpose of this

proceeding. Respondent also waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

STATUTORY AND REGULATORY AUTHORITY

6. Section 101(a) of the CWA, 33 U.S.C. § 1251(a), states that the objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the terms "discharge of a pollutant" and "discharge of pollutants" as, *inter alia*, any addition of any pollutant to navigable waters from any point source.

9. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term "pollutant" as, *inter alia*, biological materials and agricultural waste discharged to water.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as, *inter alia*, the "waters of the United States," as defined at 40 C.F.R. § 122.2.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" 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."

12. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as, *inter alia*, any individual, corporation, partnership, or association.

13. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that section.

14. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized and establish design, construction, operation, and maintenance requirements for the permit holder.

15. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 40 C.F.R. § 122.1, an NPDES permit is required for the

discharge of “pollutants” from any “point source” into “waters of the United States,” as those terms are defined at 40 C.F.R. § 122.2.

16. Pursuant to 40 C.F.R. § 122.23(a), “concentrated animal feeding operations,” or “CAFOs,” are point sources subject to NPDES permitting requirements.

17. “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 or Medium CAFO in accordance with 40 C.F.R. § 122.23(b).

18. “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.

19. “Medium CAFO” is defined, according to 40 C.F.R. § 122.23(b)(6), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves” and where either of the following conditions are met:

- (a) Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device; or
- (b) Pollutants are discharged directly into waters of the U.S. which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

20. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

21. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) 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.”

22. “Production area” is defined by 40 C.F.R. § 122.23 as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

23. The Iowa Department of Natural Resources (IDNR) is the state agency authorized to administer the federal NPDES program in the state of Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

FACTUAL BACKGROUND AND FINDING OF VIOLATION

24. Respondent owns or operates an animal feeding operation (“the Facility”) that is located in the Northeast ¼ of Section 12 of Township 84 North, Range 36 West, in Carroll County, Iowa, and has a street address of 17179 Granite Avenue, Arcadia, Iowa.

25. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. On or about September 28, 2016, EPA personnel conducted a compliance evaluation inspection of the Facility (“the EPA inspection”).

27. At the time of the EPA inspection, the Facility was confining approximately 692 head of beef cattle. Based on information gathered during EPA inspection and IDNR records, Respondent has consistently confined at least 300 head of beef cattle at the Facility.

28. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility’s confinement areas at times relevant to this Order.

29. The Facility confined and fed or maintained cattle for a total of 45 days or more in any twelve-month period relevant to this Order.

30. The Facility is an “animal feeding operation” or “AFO” within the meaning of 40 C.F.R. § 122.23(b)(1).

31. The Facility is a “concentrated animal feeding operation” or “CAFO” within the meaning of 40 C.F.R. § 122.23(b)(2).

32. The Facility is a “Medium CAFO” within the meaning of 40 C.F.R. § 122.23(b)(6).

33. The Facility is a “point source” within the meaning of 40 C.F.R. § 122.23(a) and Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

34. The EPA inspector observed that the Facility lacks adequate engineered livestock waste control facilities to prevent discharges of manure and process wastewater. Analysis of sampling conducted by the EPA inspector documented that feedlot-related pollutants discharge into the unnamed tributary of the Middle Raccoon River.

35. The inspector observed that road culverts facilitate the discharge of manure and process wastewater into Middle Raccoon River and its tributaries. The road culverts are “man-made ditches, flushing systems or similar man-made devices,” as included in the definition of Medium CAFO in 40 C.F.R. § 122.23(b)(6).

36. Manure and process wastewater discharged from the Facility are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

37. The Middle Raccoon River and its tributaries are “waters of the United States” within the meaning of 40 C.F.R. § 122.2 and, therefore, “navigable waters” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

38. The Middle Raccoon River is listed by the State of Iowa as impaired for nitrates and E. coli.

39. Respondent did not have an NPDES permit authorizing the discharge of pollutants from the Facility.

40. Based on the size of the Facility, the presence of the culverts that facilitate pollutant discharges, and the proximity of the Facility to the Middle Raccoon River and its tributaries, process wastewater containing pollutants from production areas at the Facility will continue to flow into the Middle Raccoon River and its tributaries as a result of significant precipitation events.

41. The flow of process wastewater from the Facility to the Middle Raccoon River and its tributaries constitute unauthorized discharges of pollutants from a point source to waters of the United States. This discharge violates Section 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 Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED and AGREES to take the following actions to eliminate violations of the CWA:

42. Respondent shall comply with the CWA.

43. Within 180 days of the Effective Date of this Order, Respondent shall reduce the number of cattle confined at the Facility below the Medium CAFO regulatory threshold of 300

head of beef cattle, unless:

- (a) the Facility can be managed in a manner that prevents the discharge of pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
- (b) Respondent applies for an NPDES permit that authorizes pollutant discharges to waters of the United States.

44. If Respondent cannot cease all discharges from the Facility to waters of the United States, regardless of whether the number of livestock is reduced below regulatory thresholds, then Respondent shall immediately remove and properly dispose of manure, litter and process wastewater from areas that cannot be controlled in a manner to prevent discharges.

45. Within 30 days of the Effective Date of this Order, Respondent shall inform EPA in writing of all actions that Respondent has taken or will take to comply with the CWA and the terms of this Order.

46. If Respondent intends to apply for an NPDES permit that authorizes the discharge of pollutants, then upon issuance of that permit Respondent shall comply with all terms contained therein.

47. If Respondent intends to construct runoff control structures that enable confinement of beef cattle above regulatory thresholds, then Respondent shall submit written monthly progress reports to EPA beginning within 60 days of 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 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 or will be addressed.

48. Upon completion of runoff control structures, Respondent shall submit to EPA a Notice of Construction Completion certified by a professional engineer within 30 days of the completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

General Provisions

49. 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.

50. Compliance with the terms of this Order shall neither relieve Respondent of liability for any violations of the CWA nor preclude EPA from initiating an administrative or civil judicial enforcement action to recover penalties or seek additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319, for such violations.

51. Nothing in this Order shall limit EPA's right to obtain access to and/or inspect the Facility and/or to request additional information from Respondent pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

52. 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.

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

Angela Acord
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

54. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the information submitted that is entitled to confidential treatment and which is not effluent data. For any such claim, Respondent must describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separately enclosed 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.

Failure to Comply

55. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the Northern District of Iowa may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply

with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the Act and for any violations of this Order.

Effective Date

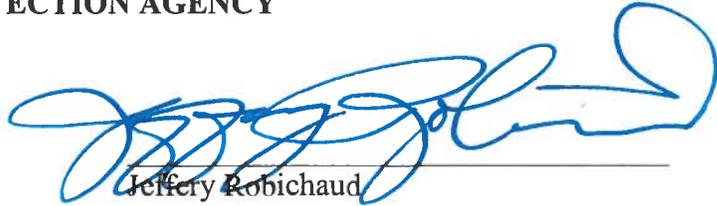
56. The terms of this Order shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order is signed by EPA.

Termination

57. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/24/18



Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7

Date: 1.24.18



Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

For the Respondent:

Kenneth P Venner

Kenneth Venner

12-19-17

Date