

US EPA ARCHIVE DOCUMENT

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

IN THE MATTER OF:)	
)	
)	Docket No. CWA-07-2012-0013
)	
KNOX COUNTY FEEDERS, INC.)	
)	
BLOOMFIELD, NEBRASKA)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent,)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

Consent Agreement and Final Order

The United States Environmental Protection Agency, Region 7 (EPA) and Knox County Feeders, Inc., (Respondent), have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. Thus, this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent’s alleged violations of the National Pollutant Discharge Elimination System (NPDES) permit for Respondent’s feedlot in Knox County, Nebraska.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

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

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Nebraska Department of Environmental Quality (NDEQ) is the agency within the state of Nebraska authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

6. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to commence an action for administrative penalties against any person who violates Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations

7. Respondent owns and operates an animal feeding operation (Facility) that is located in the Southwest ¼, Section 4, Township 30 North, Range 04 West, in Knox County, Nebraska. The Facility is comprised of outdoor cattle pens with a capacity of approximately 5,000 head.

8. Respondent is a corporation and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

9. On January 22, 2010, EPA issued an Information Request Letter pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to Respondent seeking information regarding their nutrient management plan and associated land application activities. EPA received the Respondent's initial response on March 17, 2010 and was provided additional information on February 22, 2011.

10. At all times pertinent to this Consent Agreement and Final Order, the Facility was a "concentrated animal feeding operation" and a "point source" as defined by the CWA and implementing regulations.

11. At all times relevant to this Consent Agreement and Final Order, Respondent was operating under an NPDES General permit (NEG010000) which was issued on April 1, 2003, and expired on March 31, 2008. This NPDES permit is administratively extended until NDEQ approved a superseding permit.

Alleged Violations

FINDINGS OF VIOLATION

NPDES Permit Violations

Failure to Adequately Sample Soil, Manure, and Process Waste Water

12. Respondent's Nutrient Management Plan (NMP) requires that nutrient analysis will be performed on liquid runoff and solid manures at least annually. The NMP requires that soil sampling will be conducted at least annually. Moreover, the NMP requires that manure application rate will be determined by manure sampling information, soil sampling information and crop requirements and that all manure shall be applied at agronomic rates.

13. Based on information provided by the Respondent, at a minimum, Respondent failed to take manure solids analysis, failed to take wastewater analysis, and/or failed to analyze soils samples from 2005 through 2009. Without conducting these required analyses, Respondent was unable to calculate rates that ensured application of manure at agronomic rates.

14. Respondent's failure to adequately sample soil and manure and process waste water generated at its Facility and calculate application rates based on these analyses to apply manure and process waste water at agronomic rates are violations of the NMP which is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

Recordkeeping

15. Respondent's NMP requires that Respondent shall keep records on all manure applications and the records will include, among other things, the date of application, the type and amount applied, field and type of crop to which manure was applied, the number of acres applied to, the calculated application rate, and records will be kept on all manure sold or given away. The NMP also requires that records will be kept on soil sampling results and manure sampling results. The NMP requires that Respondent will keep all records for at least five years.

16. When requested, Respondent was unable to produce records Respondent is required to keep by the NMP and NPDES permit.

17. Respondent's failure to maintain land application, soil sampling, and manure sampling records as required by the NMP and NPDES permit are violations of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

CONSENT AGREEMENT

18. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

19. Respondent neither admits nor denies the factual allegations and alleged violations contained in this Consent Agreement and Final Order.

20. Respondent waives any right to contest the allegations as well as its right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Respondent and Complainant each agree to bear their own costs and, if applicable, any attorney's fees.

22. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

23. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Twenty Thousand Dollars (\$20,000).

24. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payments shall be made by cashier or certified check made payable to "United States Treasury." The check must include the docket number and the name of the case. The check must be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letters and the checks shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

25. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

26. The penalty payment made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

27. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

28. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342. The effect of the settlement described in paragraph 26 above is conditioned upon the accuracy of this certification.

29. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

30. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

31. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

32. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The Effective Date shall be the date it is signed by the Regional Judicial Officer.

For the Respondent:

Date

Mr. Donald J. Stange

In the Matter of Knox County Feeders, Inc.
Consent Agreement/Final Order
Docket No.: CWA-07-2012-0013

For the United States Environmental Protection Agency - Region 7

Date

Karen Flournoy
Director
Water, Wetlands and Pesticides Division

J. Daniel Breedlove
Assistant Regional Counsel

In the Matter of Knox County Feeders, Inc.
Consent Agreement/Final Order
Docket No.: CWA-07-2012-0013

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.

ROBERT L. PATRICK
Regional Judicial Officer

Date: _____