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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:	)	Docket No. CWA-07-2014-0102
Winifred Feed Lot, LLC	)	
Frankfurt, Kansas	)	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 Winifred Feed Lot, LLC. (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 Clean Water Act at Respondent's beef feeding operation near Frankfort, Kansas.

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.

US EPA ARCHIVE DOCUMENT

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated Section 301and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by failing to meet the requirements of its National Discharge Pollutant Elimination System (NPDES) permit and by discharging pollutants from a concentrated animal feeding operation (CAFO) into navigable waters of the United States.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a NPDES permit issued pursuant to 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 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.

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

6. Section 504(12) of the CWA, 33 U.S.C. § 1362(1), defines the term "discharge of pollutant" to include "any addition of any pollutant to navigable waters from any point source."

7. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, among other things, 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, EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 40 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. "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."

11. "Production Area" is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage

US EPA ARCHIVE DOCUMENT

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.

12. "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.

13. "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).

14. "Large CAFO" is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than "1,000 cattle other than mature dairy cows or veal calves."

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

16. The Kansas Department of Health and Environment (KDHE) is the agency within the state of Kansas authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

17. 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 301 or 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Factual Allegations

18. Respondent owns and/or operates an animal feeding operation located in the Northeast ¼ of Section 26 in Township 3 South, Range 08 East, in Marshall County, Kansas. The Facility consists of, among other things, a working pen, 28 open cattle confinement pens, a solids settling basin and an earthen storage lagoon. The facility also includes a feedstock storage area and other production areas.

US EPA ARCHIVE DOCUMENT

19. On December 11, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. During the inspection, the inspectors identified that the feedstock storage area lacked runoff controls and process wastewater from the area flowed into a cropped field which drains to Perkins Creek. EPA conducted runoff modeling and confirmed that process wastewater from the feedstock storage area flowed through the field and discharged into Perkins Creek. Inspectors also identified that a portion of the confinement pens at the Facility flowed to the roadside ditch west of 18th Road which discharged to Perkins Creek.

20. Perkins Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2. Based on the Kansas 2012 303(d) list, Perkins Creek is impaired for phosphorus, total suspended solids, copper and impaired biology.

21. The Facility confines and feeds or maintains beef cattle for a total of forty-five (45) days or more in any twelve month period.

22. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.

23. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).

24. Based on inspector observations and Respondent's records, the number of cattle confined and fed at the Facility at all times relevant to this action were greater than 1,000, therefore the Facility was 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).

25. Respondent had a NPDES permit for the Facility that became effective September 19, 2007, and expired September 18, 2012. Respondent submitted an application for NPDES permit renewal on October 10, 2011, however, the NPDES permit had not been reissued because of continued failure by Respondent to develop and implement a Nutrient Management Plan. At times pertinent to the consent agreement and final order the Facility operated without a NPDES permit.

Alleged Violations

26. The allegations set forth in paragraphs 1 through 25 are incorporated herein.

27. Facility feedstock storage and confinement pen areas lacked runoff controls necessary to contain precipitation-related runoff. The lack of adequate runoff controls resulted in conditions in which Respondent discharges manure, litter and/or process wastewater to Perkins Creek and its tributaries, waters of the United States. Respondent did not have a NPDES permit after September 18, 2012, as required by 40 C.F.R. § 122.23(d)(1) that authorized discharges that occurred after permit expiration. Respondent's discharges were a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

US EPA ARCHIVE DOCUMENT

28. Respondent's NPDES permit contained a compliance schedule requiring Respondent to develop, submit for KDHE review and implement a NMP by February 27, 2009. Respondent never submitted a NMP as required by the NPDES permit. The failure from February 28, 2009, through September 18, 2012, to develop and implement a NMP was a violation of the NPDES permit and CWA Section 402, 33 U.S.C. § 1342.

CONSENT AGREEMENT

29. Solely for the purpose of this proceeding, and to fully resolve EPA's allegations without the need for a trial, 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.

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

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

32. Respondent and EPA shall each agree to bear their own costs and, if applicable, any attorney's fees.

33. 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.

34. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Sixteen Thousand One Hundred and Fifty Dollars ($16,150).

35. 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 checks must be remitted to:

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

US EPA ARCHIVE DOCUMENT

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

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

J. Daniel Breedlove
Senior Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

36. 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.

37. Penalty payments 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.

38. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311. The effect of the settlement described in paragraph 39 below is conditioned upon the accuracy of this certification.

39. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States and Respondent's liability for civil penalties based on the Alleged Violations and Factual Allegations in this Consent Agreement and Final Order.

40. 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.

41. 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.

US EPA ARCHIVE DOCUMENT

42. 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.

43. 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.

US EPA ARCHIVE DOCUMENT

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

_____
Date

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

_____
J. Daniel Breedlove
Senior Counsel

US EPA ARCHIVE DOCUMENT

For the Respondent:

10-8-14
Date

Steven F. Keating
Winifred Feed Lot, LLC

US EPA ARCHIVE DOCUMENT

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.

_____
Karina Borromeo
Regional Judicial Officer

Date: _____

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