

US EPA ARCHIVE DOCUMENT

IN THE MATTER OF:) Docket No. CWA-309(a)-11-029
) **Findings of Violation and**
 Joe De Hoog) **Order for Compliance**
 Three D Dairy)
 8485 Edison Avenue) Proceedings under sections 308(a) and 309(a) of
 Ontario, CA 91762) the Clean Water Act, as amended,
) 33 U.S.C. §§ 1318(a) and 1319(a)
 NPDES General Permit # CAG018001)

**FINDINGS OF VIOLATION
 AND
 ORDER FOR COMPLIANCE**

The following Findings of Violation are made and Order for Compliance (Order) issued pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308(a) and 309(a)(3), (a)(4), and (a)(5)(A) of the Clean Water Act, as amended (the Act or CWA), 33 U.S.C. §§ 1318(a), and 1319(a)(3), (a)(4), and (a)(5)(A). This authority has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated by the Regional Administrator to the Director of the Water Division of EPA, Region 9. Notice of this action has been given to the State of California.

STATUTORY AND REGULATORY BACKGROUND

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States, except in compliance with the Act, including Section 402, 33 U.S.C. § 1342, which establishes the National Pollutant Discharge Elimination System (NPDES) program.

1. Concentrated animal feeding operations (CAFOs), as defined at 40 CFR § 122.23, are point sources subject to the NPDES permit program.
2. Under Section 402, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources. The State of California has an EPA-approved NPDES program, and issues permits, including permits for concentrated animal feeding operations, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. In 2007, California Regional Water Quality Control Board, Santa Ana Region (Regional Board), issued “General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region,” Order No. R8-2007-0001, NPDES No. CAG018001 (the General Permit).

3. The General Permit provides that the permittee shall design, construct and maintain containment structures to retain all wastewater within the facility, including all process wastewater and all precipitation on, and drainage through, manured areas resulting from rainfall up to and including a 25-year, 24-hour rainfall event. (General Permit, Provision VII C.3.a)
4. The General Permit provides that the permittee shall develop and fully implement an Engineered Waste Management Plan (EWMP) acceptable to the Regional Board and prepared in accordance with the Guidelines for the Development of Engineered Waste Management Plans for Concentrated Animal Feeding Operations (Dairies and Related Facilities), February 2001, or any more recent version. All structures identified in the EWMP shall be designed by a registered professional engineer, or other qualified individual. Upon completion of construction of all structures identified in the EWMP, the discharger shall submit a certification from the engineer or other qualified individual who prepared the EWMP that all facilities have been constructed as specified in the EWMP. (General Permit, Provision VII C.3.b)
5. The General Permit provides that the permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this order that has a reasonable likelihood of adversely affecting human health or the environment. (General Permit, Attachment A-Standard Provisions, Paragraph I.C)
6. The General Permit provides that a permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the General Permit. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a permittee when necessary to achieve compliance with the conditions of the General Permit. (General Permit, Attachment A-Standard Provisions, Paragraph I.D)
7. The General Permit provides that a permittee shall comply with the Monitoring and Reporting Program requirements in Attachment B of this order. (General Permit, Provision VII B)
8. The General Permit provides that all monitoring data shall be maintained for at least five years and shall be made available to Regional Board, SWRCB, EPA staff and/or their authorized representatives (including an authorized contractor acting as their representative), upon request. (General Permit, Attachment B - Monitoring and Reporting Program, I.A)
9. The General Permit provides that all containment structures, including, but not limited to, ponds, berms, and wastewater distribution lines, shall be inspected at least once each week during the entire year and at least once each 24-hour period during a storm event in

which rainfall exceeds 0.5 inches in 24 hours. (General Permit, Attachment B - Monitoring and Reporting Program, I.B)

FACTUAL BACKGROUND

10. Mr. Joe De Hoog (Respondent) operates a dairy known as “Three D Dairy” at 8485 Edison Avenue, Ontario, CA 91762 (the Facility).
11. The Facility is a CAFO as defined in the General Permit and in 40 CFR § 122.23.
12. Respondent submitted a notice of intent to comply (NOI) with the General Permit to the Regional Board on September 9, 1993, and is subject to the terms and conditions of the General Permit.

FINDINGS OF VIOLATION

13. On February 17, 2011, an authorized representative of the Regional Board inspected the Facility to determine its compliance with the General Permit. The findings of this inspection are documented in a report dated April 8, 2011. The inspector’s observations included, but were not limited to, the following:
 - a. the EWMP was not fully implemented;
 - b. berms were not adequately maintained;
 - c. impoundments lacked depth markers;
 - d. floating solids were present at the north end of Lagoon #1;
 - e. manure was present at the northwest corner of the expanded lagoon#2; and
 - f. accumulated manure (six to 12 inches) was present in the corral.
14. Based upon that inspection, and the review of documents related to Three D Dairy, EPA has determined the following findings of violation:
 - a. In violation of General Permit Provisions VII.C.3.a, Respondent failed to design, construct and/or maintain adequate containment structures to retain all wastewater within the facility resulting from rainfall up to and including a 25-year, 24-hour rainfall event.
 - b. In violation of General Permit Provisions VII.C.3.b, Respondent failed to adequately develop, properly certify and/or fully implement an EWMP.

- c. In violation of General Permit Attachment A – Standard Provision I.C, Respondent failed to take all reasonable steps to minimize or prevent any discharge in violation of the General Permit that has a reasonable likelihood of adversely affecting human health and the environment.
 - d. In violation of General Permit Attachment A – Standard Provision, I.D, Respondent failed to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the conditions of the General Permit.
15. By failing to comply with the General Permit, Respondent has violated a condition or limitation in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

ORDER FOR COMPLIANCE

Under section 308(a) of the Act, 33 U.S.C. § 1318(a), EPA may require reports and information from the owner or operator of a point source for purposes of determining compliance with the Act's requirements or carrying out the NPDES program. Under section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA may, upon finding a person in violation of specific sections of the Act, issue an administrative order for compliance. Based on the foregoing Findings and pursuant to sections 308(a) and 309(a) of the Act, EPA hereby orders Respondent to comply with sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a), 1342, and with the following requirements:

16. Immediately upon receipt of this Order, Respondent shall take all necessary measures to achieve consistent and continuous compliance with all terms and conditions of Order No. R8-2007-0001 and NPDES Permit Number CAG018001.
17. By December 31, 2011, Respondent shall provide to EPA and to the Regional Board:
 - a. the most recent version of the EWMP developed for the Facility, including any modifications to the EWMP necessary to comply with the General Permit and this Order;
 - b. a report stating: (1) whether the EWMP submitted pursuant to the preceding paragraph is being fully implemented, and, (2) if the EWMP is not being fully implemented, what additional actions Respondent proposes in order to implement the EWMP, and the schedule by which those actions will be completed;
 - c. a report stating the date you completed or will complete all necessary repairs to containment structures sufficient to retain all wastewater within the Facility, as required by the General Permit, Provision VII C.3.a;

- d. a plan showing how the Respondent will properly design, construct and maintain adequate containment structures to retain all wastewater within the Facility, including all process wastewater and all runoff from manured areas resulting from rainfall up to and including a 25-year, 24-hour rainfall event, in compliance with the General Permit Provision VII.C.3.a. and this Order;
 - e. a statement assuring EPA and the State that the Respondent will take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, in compliance with the General Permit Attachment A – Standard Provision I.C. and this Order;
 - f. a statement assuring EPA and the State that the Respondent will at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used, in compliance with the General Permit Attachment A- Standard Provision I.D. and this Order; and
 - g. any other information that Respondent wants EPA to consider.
18. By December 31, 2011, Respondent shall submit a report explaining how each of the deficiencies noted during the inspection and summarized in Paragraph 13, above, will be/has been addressed. To the extent that information responsive to this request has been provided in response to another request in this Order, Respondent can simply direct EPA to where that information has been provided rather than providing the same information twice.
19. EPA and/or the Regional Board may require Respondent to make modifications to the EWMP. Unless otherwise specified by EPA or the Regional Board, Respondent shall, within fifteen (15) days of receipt of comments from EPA or the Regional Board, incorporate the modifications into the EWMP and implement the modifications.
20. By December 31, 2011, Respondent shall submit a report to EPA that includes the following:
- a. A description, along with supporting documents (to the extent such documents exist), of the Facility's history as a dairy/cattle operation, including its dates of operation, the identity of its owner(s) and operator(s) since it began operation, and the identity of the prior owner(s) and operator(s), and whether the current owner(s) and operator(s) is an individual, a partnership, a limited liability company, a corporation, or some other legal entity;
 - b. A description, along with supporting documents (to the extent such documents exist), of the Facility's maintenance practices during the past five years with

respect to removal of solids from lagoons and basins and with respect to cleaning of corrals, including but not limited to the frequency of solids removal and corral cleaning and the disposal location for manure solids;

- c. A description, along with supporting documents (to the extent such documents exist), of the history of all maintenance and construction activity at the Facility over the past five years with respect to all berms and containment structures (including dates of construction and modification) used to prevent process wastewater and corral runoff from leaving the confines of the Facility (including internal communications, design and construction documents, location maps, contracts, invoices for construction or repair, drawings, correspondence, and consultant reports);
 - d. An accounting, along with supporting documentation (to the extent such documents exist), of the animal population, including but not limited to mature dairy cows (milked or dry), heifers, steers, bulls, and cow/calf pairs, confined or stabled at the Facility over the past five years;
 - e. Number of days that animals at the Facility have been stabled or confined and fed during each month during the past five years;
 - f. A description, along with supporting documents (to the extent such documents exist), of any crops, vegetation, forage growth, or post harvest residues sustained during the normal growing season over any portion of the areas in which the animals at the Facility are stabled or confined;
 - g. Records of all monitoring conducted over the last five years by Respondent pursuant to the requirements in General Permit Attachment B – Monitoring and Reporting Program;
 - h. All documentation of weekly inspections of containment structures and all documentation of containment structures in each 24-hour period during a storm event in which rainfall exceeds 0.5 inches in 24 hours; and
 - i. A description, along with all supporting documents, of manure disposal practices, including the amount of manure spread on cropland at the Facility, the location of any manure application at the Facility, the amount of manure hauled away from the Facility and the name and address of the off-site location to which any manure was hauled.
21. By December 31, 2011, Respondent shall submit:

- a. Detailed costs to revise the EWMP as required by this Order;
 - b. Detailed cost estimates, including estimated capital, one-time, and annual costs, for fully implementing the revisions to the EWMP as required by this Order;
 - c. Detailed costs for revising the monitoring as required by this Order; and
 - d. Detailed estimates, including estimated capital, one-time and annual costs for implementing the revisions to the monitoring program as required by this Order.
22. All submittals required under this Order shall include the following certification signed by Respondent:
- I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
23. All submittals made pursuant to this Order shall be mailed to the following addresses:
- Ken Greenberg
U.S. Environmental Protection Agency
CWA Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105
- Stephen D. Mayville
California Regional Water Quality Control Board,
Santa Ana Region
3737 Main St., Suite 500
Riverside, CA 92501
24. Requests for information contained within this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR § 1320.4(a)(2).

25. EPA has promulgated regulations to protect the confidentiality of the business information it receives at 40 CFR Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified by 40 CFR § 2.203(b) for all or part of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 CFR Part 2, Subpart B. If no claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondent may not withhold from EPA any information on the grounds that it is confidential business information.
26. This Order does not in any way waive or modify Respondent's responsibility and obligation to ascertain and comply with all applicable federal, state, tribal, or local laws, regulations, ordinances, permits or licenses.
27. Issuance of this Order shall not be deemed an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.
28. Section 309(a), (b), (d) and (g), of the Act, 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the Act. In addition, section 309(c) of the Act, 33U.S.C. §1319(c), provides criminal sanctions for negligent or knowing violations of the Act, and for knowingly making false statements.
29. This Order is not a permit under the Act, and does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state, or local laws, regulations, ordinances, permits or licenses.
30. This Order shall be binding upon Respondent and its officers, directors, agents, employees, heirs, successors and assigns.
31. This Order shall become effective upon the date of receipt by Respondent.

Date: _____

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
Region IX