

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

IN THE MATTER OF:)
)
) Docket No. CWA-07-2015-0047
)
Heath Van Essen)
Van Essen Feedlot)
Inwood, Iowa) 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 Heath Van Essen, doing business as Van Essen Feedlot (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 Inwood, Iowa.

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 Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation (CAFO) into navigable waters of the United States without National Pollutant Discharge Elimination System (NPDES) permit authorization.

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

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

14. “Large CAFO” is defined, according to 40 C.F.R. § 122.23(b)(4), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves.”

15. “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 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.

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

17. The Iowa Department of Natural Resources (IDNR) is the agency within the state of Iowa authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

18. 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

19. Respondent owns or operates an animal feeding operation ("Facility") that is located in Section 27 of Township 98 North, Range 47 West, in Lyon County, Iowa, and has a street address of 2020 260th Street, Inwood, Iowa.

20. On or around June 18 and 19, 2014, EPA personnel conducted a compliance evaluation inspection of the Facility.

21. At the time of the EPA inspection, the Facility was confining approximately 1042 head of beef cattle. Based on information gathered during the EPA inspection and state inspection records, Respondent has consistently confined at least 300 head of beef cattle.

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

23. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve-month period relevant to this Order.

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

25. At times relevant to this Order, the number of beef cattle confined and fed at the Facility was greater than 1,000 for 45 days or more during a twelve-month period, therefore the Facility was/is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4) and as the term CAFO is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. The EPA inspector observed that the Facility lacks adequate engineered livestock waste control facilities (LWCFs) to prevent discharges of manure and process wastewater. EPA sampling documented that feedlot-related pollutants discharge into Dry Run Creek and its tributaries.

27. The inspector also observed that culverts and road ditches facilitate manure and process wastewater discharges into Dry Run Creek and its tributaries. The culverts and road ditches are man-made ditches, flushing systems or similar man-made devices.

28. At times relevant to this Order, the number of beef cattle confined at the Facility was between 300 and 999 head for 45 days or more during a twelve-month period, and pollutants discharges flowed through man-made culverts and ditches, therefore the Facility was/is a medium CAFO as that term is defined in 40 C.F.R. §122.23(b)(6) and as the term CAFO is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. Dry Run Creek and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.

Alleged Violations

30. The allegations set forth in paragraphs 1 through 29 are incorporated herein.

31. Facility production areas lacked runoff controls necessary to contain precipitation-related runoff. The lack of adequate runoff controls resulted in conditions in which Respondent discharged manure, litter and/or process wastewater to Dry Run Creek and its tributaries, waters of the United States. Respondent did not have a NPDES permit authorizing the pollutant discharges. Respondent's discharges were violations of Section 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

CONSENT AGREEMENT

32. 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.

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

34. 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.

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

36. 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.

37. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Fifteen Thousand Dollars (\$15,000). EPA permits Respondent to pay the penalty on an installment schedule. The penalty sum includes the base penalty and interest. The payments shall be as follows:

A. Respondent shall pay an initial installment of Five Thousand Dollars (\$5,000) within thirty (30) days of the Effective Date of the Final Order. A second payment of Five Thousand Dollars (\$5,000) shall be paid within six months of the Effective Date. The third and final payment of Five Thousand Dollars (\$5,000) shall be paid within one year of the Effective Date.

B. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest. The interest rate determined by the Secretary of the Treasury, compounded daily

38. 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.

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

Howard Bunch
Senior Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

39. 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.

40. 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.

41. Respondent represents that the control structures that he has installed at his facility, with proper operation and maintenance, are adequate to prevent all future pollutant discharges and

In the Matter of Van Essen Feedlot
Consent Agreement/Final Order

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 42 below is conditioned upon the accuracy of this certification.

42. 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.

43. 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.

44. 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.

45. 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.

46. This Final Order shall 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 the Final Order is filed with the Regional Hearing Clerk after signature by the Regional Judicial Officer.

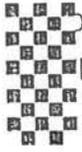
In the Matter of Van Essen Feedlot
Consent Agreement/Final Order

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticides Division

Howard Bunch
Senior Assistant Regional Counsel



4 17 12:12p

Van Essen Repair

712 753 2123

p.1

8/28/2017/WED 04:07 PM Brick Gentry Law

FAX No.

P. 010

In the Matter of Van Essen Feedlot
Consent Agreement/Final Order

For the Respondent:

8-4-17
Date

Heath Van Essen
Mr. Heath Van Essen
D/B/A Van Essen Feedlot

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer