

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
GREG SCHROEDER)	Docket No. CWA-07-2018-0268
)	
Respondent)	CONSENT AGREEMENT/ FINAL ORDER
)	
Proceedings under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g))	
)	
)	

The U.S. Environmental Protection Agency, Region 7 (“EPA”) and Greg Schroeder (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”).

COMPLAINT

Jurisdiction

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 CA/FO alleges that the Respondent discharged pollutants into a water of the United States without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

3. Complainant, by delegation from the Administrator of the EPA to the Regional Administrator, EPA, Region 7, and re-delegation to the Director of Region 7’s Water, Wetlands and Pesticides Division.

4. Respondent operates a Concentrated Animal Feeding Operation located in Odebolt, Iowa.

STATUTORY AND REGULATORY AUTHORITY

5. 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.

6. 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.

7. 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.

8. 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.

9. 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. § 112.2 (1993).

10. 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."

11. 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.

12. 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.

13. 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.

14. 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.

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

16. “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).

17. “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.

18. “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 United States through a man made ditch, flushing system, or other similar man-made device; or

(b) Pollutants are discharged directly into waters of the United States 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.

19. “Waters of the United States” are defined in 40 C.F.R. § 112.2 (1993) to include intrastate rivers and streams, and tributaries thereto.

20. “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.”

21. “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.

22. 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 ALLEGATION OF VIOLATION

23. Respondent owns or operates an animal feeding operation that is located at the: Southeast Quarter of the Southwest Quarter of Section 18, of Township 86 North, Range 37 West, in Sac County, Iowa, more commonly known as: 3690 Hope Avenue, Odebolt, Iowa 51458 (the Facility).

24. Respondent is and, at all times referred to herein, was doing business in the State of Iowa.

25. Respondent is and, at all times referred to herein, was a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. On or about March 29, 2017, a representative of the EPA conducted a compliance evaluation inspection at the Facility (the “inspection”). The inspection was conducted under the authority of Section 308 of the CWA, 33 U.S.C. § 1318, to evaluate Respondent’s compliance with the requirements of the CWA and the federal regulations promulgated thereunder. A copy of the inspection report was transmitted to Respondent on July 5, 2017.

27. At the time of the inspection, Respondent did not have a NPDES permit authorizing the discharge of pollutants from the Facility.

28. Observations made during the inspection revealed that the Facility lacks adequate livestock waste control structures to prevent the discharge of manure and process wastewater from Facility production areas.

29. Manure and process wastewater discharged from the Facility are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

30. Observations made during the inspection revealed that, as a result of significant precipitation events, pollutants from the Facility’s production areas discharge at two locations: (1) from the feedstock storage area, into the east road-side ditch, through a culvert, and into a buried drain tile that discharges into Wheeler Creek, approximately 250 yards west of the Facility; and (2) from the southwest and southeast open lots, working lots, ewe confinement lots, partially covered lots, and mono-slope building, feed truck drive/cattle alley way, through a storm water flow pathway south and west of the Facility into the east road-side ditch, through a culvert,

and into a buried drain tile that discharges into Wheeler Creek, approximately 150 yards west of the Facility.

31. Analysis of samples collected during the inspection revealed the presence of *Escherichia coli* (*E. coli*), a disease-causing type of fecal coliform bacteria and other pollutants passed through the fecal excrement of livestock and associated with discharges from CAFOs, in the discharge from the Facility.

32. The observations made during the inspection and collected samples document the discharge of pollutants from the Facility into Wheeler Creek.

33. Wheeler Creek, a tributary of Boyer River, is identified as an intermittent water per USGS topography maps at the Facility and as a perennial water three miles south of the Facility. Wheeler Creek has a well-defined bed and bank and has continuous flow all year during years with normal precipitation.

34. Wheeler Creek is a “water of the United States” and “navigable water” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).

35. At all times relevant to the allegations herein, the Facility stabled or confined and fed or maintained animals for a total of 45 days or more in a twelve (12) month period.

36. At all times relevant to the allegations herein, neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility’s confinement areas.

37. At all times relevant to the allegations herein, the Facility was an “animal feeding operation” or “AFO” as defined by 40 C.F.R. § 122.23(b)(1).

38. At all times relevant to the allegations herein, the Facility stabled or confined at least 300 head of cattle.

39. At all times relevant to the allegations herein, the Facility was a “Medium CAFO,” as defined by 40 C.F.R. § 122.23(b)(6).

40. The Facility is a “concentrated animal feeding operation” or “CAFO” as defined by 40 C.F.R. § 122.23(b)(2). The Facility is a “point source” as defined by 40 C.F.R. § 122.23(a) and Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

41. As described above, based on the size of the Facility, the presence of culverts and drainage tiles that facilitate pollutant discharges, and the proximity of the Facility to Wheeler Creek, pollutants from production areas at the Facility will continue to flow intermittently into Wheeler Creek as a result of significant precipitation events.

42. The intermittent but continuing flow of process wastewater from the Facility to Wheeler Creek constitutes unauthorized discharges of pollutants to waters of the United States in violation Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and implementing regulations.

CONSENT AGREEMENT

43. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

44. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

45. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

46. Respondent and Complainant each agree to bear their own costs and attorney's fees.

47. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

48. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

49. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Sections 301 and 402 of the CWA.

50. The effect of settlement is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 49 above, of this CA/FO.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

51. Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000). The penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Lisa Haugen
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

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

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

52. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Reservation of Rights

53. The EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

54. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and punitive damages.

Parties Bound

55. This Final Order shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees,

contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

56. This Final Order shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Jeffery Robichaud
Director
Water, Wetlands and Pesticides Division

Date

Chris Muehlberger
Assistant Regional Counsel

Date

RESPONDENT:



Greg Schroeder



Date:

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

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed the original and one true and correct copy of the signed original Consent Agreement and Final Order with the Regional Hearing Clerk, Region 7. I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Consent Agreement and Final Order to the following

Mr. Greg Schroeder
3690 Hope Avenue
Odebolt, Iowa 51458

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Consent Agreement and Final Order to the following representative of the State of Iowa:

Ken Hessenius
Iowa Department of Natural Resources
1900 North Grand Avenue
Spencer, Iowa 513019

Name

Date