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

BEFORE THE ADMINISTRATOR

Gary Rupiper d/b/a Gary Rupiper Feedlot Templeton, Iowa	)	Docket No. CWA-07-2013-0052
Respondent	)	FINDING OF VIOLATION ORDER FOR COMPLIANCE
Proceedings under Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	

Preliminary Statement

1. The following Findings of Violation are made and Order for Compliance ("Order") issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region 7, and redelegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. The Respondent, Gary Rupiper d/b/a Gary Rupiper Feedlot ("Respondent"), owns and/or operates an animal feeding operation located in the southwest ¼ of the southeast ¼ of Section 32 in Township 83 North, Range 35 West, in Carroll County, Iowa.

Statutory and Regulatory Authority

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, 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 National Pollutant Discharge Elimination System ("NPDES") permits that, among other things, prescribe conditions whereby a discharge of pollutants may be authorized and

establish design, construction, operation, and maintenance requirements for the permit holder.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutant" to include "any addition of any pollutant to navigable waters from any point source."

6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.

7. "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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged."

8. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. § 122. Under 40 C.F.R. § 122.23(d)(1), the owner or operator of a CAFO must apply for an NPDES permit if the CAFO discharges a pollutant into a water of the United States.

9. "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.

10. "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 Medium CAFO in accordance with 40 C.F.R. § 122.23(b)(6).

11. "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 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.

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

13. 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.

Factual Background and Findings of Violation

14. Respondent owns and/or operates a feedlot ("Facility") that is located in the southwest ¼ of the southeast ¼ of Section 32 in Township 83 North, Range 35 West, in Carroll County, Iowa.

15. IDNR conducted an inspection of the Facility on March 9, 2010. During the inspection, IDNR's inspector observed manure, litter and process wastewater discharging through a roadside ditch, culvert and drainage ditch into a tributary of Brushy Creek. The inspector sampled the manure, litter and process wastewater. Sample results confirmed that the runoff entering the unnamed tributary Brushy Creek contained feedlot related pollutants from Respondent's Facility.

16. On March 26, 2013, EPA personnel conducted a compliance evaluation inspection of the Facility. The inspectors observed that, during significant precipitation events, process wastewater flows from the feedlot's feeding pens into settling basins which, in turn, discharge into the north roadside ditch along 280th Street. Process wastewater flows through the road ditch, under 280th Street through a culvert and into a tributary of Brushy Creek, which runs for 2 miles before reaching Brushy Creek. This tributary was frozen at the time of the EPA inspection.

17. The roadside ditch along 280th Street is a man-made ditch pursuant to 40 C.F.R. § 122.23(b)(6).

18. Brushy Creek and its tributaries are waters of the United States, as defined in 40 C.F.R. § 122.2. IDNR has identified Brushy Creek as being impaired by high levels of ammonia and low levels of dissolved oxygen. Both of these impairments are routinely associated with runoff from animal feeding operations and manure piles.

19. Facility records confirm that the Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.

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

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

22. The Facility was confining approximately 592 head of beef cattle at the time of the March 26, 2013, EPA inspection.

23. At times pertinent to this order the number of cattle confined and fed at the Facility was between 300 and 999, and storm water containing pollutants flowing from the Facility passed through the roadside ditch and a culvert and discharged into waters of the United States. Therefore, the Facility is a Medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6).

24. The Facility is a CAFO as defined by 40 C.F.R. § 122.23(b)(2), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. The Facility does not have adequate livestock waste control facilities to prevent the discharge of manure, litter, and wastewater into Brushy Creek and its tributaries.

26. Respondent has not applied for an NPDES permit for the Facility.

27. The intermittent yet ongoing flow of wastewater from Respondent's Facility through the man-made ditch and into Brushy Creek and its tributaries without NPDES permit authorizations constitutes unauthorized discharges of pollutants from a point source to waters of the United States. The unauthorized discharges are violations of Section 301 of the Clean Water Act, 33 U.S.C. §1311, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth in paragraphs 14 through 27 above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

28. Within fifteen (15) days of the effective date of this Order, Respondent shall submit an Interim Measures Plan (Plan) to the EPA. The Plan shall describe, in detail, actions that Respondent will take to reduce the discharge of pollutants from Respondent's Facility to waters of the United States. The Plan shall include a schedule for implementation of the interim measures. The interim measures shall remain in place until Respondent completes construction of the feedlot waste controls as required by IDNR or otherwise complies with the CWA. Respondent shall implement the Plan immediately.

29. Within one-hundred and eighty (180) days of the effective date of this Order, Respondent shall:

a. permanently reduce the number of livestock confined at the Facility below regulatory thresholds;

b. operate the Facility so that process wastewater discharges are not facilitated by man-made conveyances or otherwise comply with the CWA; or

c. apply for an NPDES permit for the Facility. Upon issuance of the NPDES Permit, Respondent shall comply with all terms contained therein, including terms related to the design, construction, operation, and maintenance of livestock waste controls.

30. If Respondent intends to apply for an NPDES permit and construct runoff controls to allow the confinement of cattle above regulatory thresholds, then beginning thirty (30) days after receipt of this Order and continuing monthly on the seventh day of each month until Respondent submits a Notice of Construction Completion to EPA, Respondent shall submit written monthly progress reports to EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the Facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were/will be addressed.

31. If Respondent intends to apply for an NPDES permit and construct runoff controls to allow the confinement of cattle above regulatory thresholds, Respondent shall complete construction of feedlot waste controls, as required by IDNR, no later than November 1, 2014. If construction is not completed by this date, Respondent shall cease operations within areas of the Facility where feedlot runoff cannot be managed to prevent unauthorized discharges to waters of the United States. If Respondent is unable to prevent unauthorized discharges by this date then Respondent shall reduce the number of cattle confined at the Facility below regulatory threshold for a Medium CAFO until the controls are in place. Respondent shall not repopulate cattle above this regulatory threshold at the Facility unless the Facility can be operated in a manner that complies with the CWA.

32. Upon completion of the runoff control structures, Respondent shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of completion of construction. The notification shall be in writing and shall include as-built drawings of the constructed improvements.

General Provisions

Opportunity to Confer

33. This Order shall become effective 30 days after its receipt by Respondent. Prior to the

effective date, Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of the Order to Respondent. Within ten days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within 20 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

34. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 40.

Effect of Order

35. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, provides the grounds for such review.

36. Compliance with the terms of this Order shall not relieve Respondent of liability, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.

37. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.

38. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

39. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

40. All submissions to the EPA required by this Order shall be sent to:

Stephen Pollard
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

41. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.

42. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties of up to $37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

43. The terms of this Order shall be effective and enforceable against Respondent upon their receipt of the Order.

7-11-13
Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

J. Daniel Breedlove
Senior Counsel

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 Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter and small business assistance information, to the following:

Gary Rupiper
d/b/a Gary Rupiper Feedlot
17709 280th St.
Templeton, Iowa 51463.

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 Findings of Violation and Order for Compliance to the following representative of the State of Iowa:

Mr. Jim Sievers
Iowa Department of Natural Resources
Field Office #4
140 Sunnyside Lane
Atlantic, Iowa 50022

7/15/13
Date