UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:	Docket No. CWA-07-2008-0007
HARLAN VAN VOORST D/B/A HARLAN VAN VOORST FEEDLOT	CONSENT AGREEMENT AND FINAL ORDER
SIOUX COUNTY, IOWA	
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 Harlan Van Voorst (Respondent) have agreed to settle this action before EPA files a complaint. 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 discharges of pollutants into the West Branch of the Floyd River and its tributaries, waters of the United States in Sioux County, 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 has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation into the navigable waters of the United States without obtaining the necessary permit(s) required by Section 402 of the CWA, 33 U.S.C. § 1342.

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*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

4. The CWA prohibits the unpermitted discharge of "pollutants" by any "person" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. "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.

6. "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."

7. An "animal feeding operation" 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.

8. According to 40 C.F.R. § 122.23(b)(2) a "concentrated animal feeding operation" is an animal feeding operation that meets the definition of either a Large CAFO or Medium CAFO under 40 C.F.R. § 122.23(b)(4) or 40 C.F.R. § 122.23(b)(6).

9. "Large CAFO" is defined by 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation where at least "1,000 cattle other than mature dairy cows or veal calves" are stabled or confined.

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

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

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 301, 33 U.S.C. § 1311.

Factual Allegations

13. Respondent owns and operates an animal feeding operation ("Facility") that is located in Section 22 of Township 96 North, Range 45 West, in Sioux County, Iowa.

14. The Facility confines and feeds or maintains cattle for a total of 45 days or more in any twelve-month period.

15. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility's feeding areas.

16. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

17. Inspectors from EPA inspected the Facility on January 31, 2007.

18. At the time of the January 31, 2007, inspection, the Facility was confining approximately 1,328 head of cattle. The number of cattle confined and fed at the Facility is greater than 1,000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4).

19. Respondent did not have a final NPDES permit at any time prior to the EPA inspection. IDNR issued a final NPDES permit for the facility on or around March 12, 2007. However, adequate runoff controls have not been constructed.

20. Runoff from the Facility enters the north temporary settled open feedlot effluent basin (SOFEB). This temporary SOFEB has a pipe located at the south end to allow process

wastewater to overflow into a second depression that drains south/southeast approximately 300 yards to an unnamed intermittent tributary. This intermittent tributary flows approximately ¾ of a mile into a relatively permanent unnamed tributary of the West Branch of the Floyd River. This tributary is fed by drainage tiles and contains water a significant portion of the year. This tributary flows approximately 4 ¼ miles before reaching the West Branch of the Floyd River, a navigable surface water.

21. The West Branch of the Floyd River and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.

22. The Facility did not have adequate livestock waste control facilities to prevent the discharge of animal waste to the West Branch of the Floyd River and its tributaries.

23. Based on the size of the Facility, the distance from the Facility to the West Branch of the Floyd River and its tributaries, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility discharged into the West Branch of the Floyd River and its tributaries as a result of significant precipitation events.

24. Respondent had a duty to obtain a NPDES permit for the Facility.

25. At times the flow of wastewater from Respondent's Facility to the West Branch of the Floyd River constituted unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and implementing regulations. Furthermore, Respondent's failure to obtain a NPDES permit for the facility is also a violation of Sections 308 and 402 of the Clean Water Act. 33 U.S.C. §§ 1318 and1342.

Alleged Violations

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

27. Respondent is a person as defined by Section 502(5) of the CWA,33 U.S.C. § 1362.

28. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4)(iii), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). As a result, the Facility is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. The number of cattle confined and fed at the Facility were above the threshold defined in 40 C.F.R. § 122.23(b)(4)(iii) for Large CAFOs.

30. The West Branch of the Floyd River and its unnamed tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.

31. Wastewater runoff, which was discharged from the Facility into the West Branch of the Floyd River and its tributaries during and after precipitation events, contained "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

32. Respondent's Facility discharged wastewater into the West Branch of the Floyd River and its tributaries. Respondent's discharges constitute unauthorized discharges of pollutants from a point source to waters of the United States. This, coupled with Respondent not having an NPDES permit resulted in violations of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulation.

CONSENT AGREEMENT

33. 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 the Consent Agreement and Final Order.

34. Respondent neither admits nor denies the factual allegations contained in this Consent Agreement and Final Order.

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

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

37. Nothing contained in the 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.

38. Respondent consents to the issuance of the Final Order and consent to the payment of a civil penalty of Forty-three Thousand Three Hundred and Fifty-one dollars ($43,351) within thirty (30) days of the Effective Date of this Consent Agreement.

39. Payment of the penalty shall be 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 check must be remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Copies of the transmittal letter and the check shall simultaneously be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101;

and

J. Daniel Breedlove
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

40. 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.

41. This Consent Agreement and Final Order disposes of all civil and administrative penalty claims for all the CWA violations identified herein.

42. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. §§ 1311, 1318, and 1342. The effect of the settlement described in paragraph 41 above is conditioned upon the accuracy of this certification.

43. The 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.

44. The undersigned representative of the 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.

45. 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.

For the Respondent:

11-27-07
Date

Harlan Van Voorst
Harlan Van Voorst

For the United States Environmental Protection Agency - Region 7

01/08/08
Date

William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

J. Daniel Breedlove
Assistant Regional Counsel

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.

ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: January 9, 2008

IN THE MATTER OF Harlan Van Voorst d/b/a Harlan Van Voorst Feedlot, Respondent
Docket No. CWA-07-2008-0007

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Eldon L. McAfee, Esq.
Beving, Swanson & Forrest, P.C.
321 E. Walnut, Suite 200
Des Moines, Iowa 50309

and

Harlan VanVoorst
Harlan VanVoorst Feedlot
3241 360th Street
Sioux Center, Iowa 51250

Dated: 1/9/08

Kathy Robinson

Kathy Robinson
Hearing Clerk, Region 7