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-07-2003-0059
	)	
Ron Bruns	)	
d.b.a. Ron Bruns Feedyard - East Place	)	
Thurston County, Nebraska	)	
	)	
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 VII, and redelegated to the Director of Region VII's Water, Wetlands, and Pesticides Division.

2. The Respondent is Ron Bruns ("Respondent"), who owns and operates an animal feeding operation known as Ron Bruns Feedyard - East Place ("Facility") located in the SE 1/4 of the SW 1/4, Section 21, Township 25N, Range 06E in Thurston County, Nebraska. The Facility is an open cattle feedlot located near Pender, Nebraska.

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

5. Section 504(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. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

7. "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.

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. "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.

10. "Concentrated animal feeding operation" is defined by 40 C.F.R. § 122.23(b)(3) as "an 'animal feeding operation' which meets the criteria in appendix B of this part."

11. Appendix B to 40 C.F.R. § 122.23 states that an animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if the animal feeding operation confines more than 1,000 slaughter and feeder cattle.

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

13. EPA may delegate authority to implement and enforce the Clean Water Act to States and Tribes. EPA retains concurrent enforcement authority under the Clean Water Act if a State or Tribe has been delegated such authority. EPA has primary authority for implementation and enforcement of the Clean Water Act in areas where a State or Tribe has not been delegated authority under the Clean Water Act.

Factual Background and Findings of Violation

14. Ron Bruns is an individual and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

15. Ron Bruns owns and operates an animal feeding operation ("Facility") located in the SE 1/4 of the SW 1/4, Section 21, Township 25N, Range 06E in Thurston County, Nebraska.

16. On September 17, 2002, EPA personnel visited Respondent's Facility and observed conditions at the Facility.

17. At the time of the EPA visit, the Facility confined approximately 2,000 head of cattle. The number of cattle confined at the Facility is greater than 1,000 animal units as that term is defined in 40 C.F.R. Part 22, Appendix B.

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

19. Neither crops, vegetation, forage growth, nor post-harvest residues were sustained over any portion of the Facility at the time of inspection.

20. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(3), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Respondent does not have an NPDES permit for the Facility.

22. The Facility contains approximately 10 acres of feedlot area, with approximately 35 acres of contributing drainage.

23. An unnamed tributary to Logan Creek is located immediately southeast of the Facility. At some points, the distance from the Facility to the unnamed tributary to Logan Creek is approximately 100 yards.

24. The Facility does not have any wastewater runoff control structures. During precipitation events, wastewater runoff containing pollutants from the feedlot discharges directly into the unnamed tributary to Logan Creek.

25. From the Facility, the unnamed tributary flows for approximately 1½ miles and then enters Logan Creek, which is part of the Elkhorn River Basin. The segment of Logan Creek which is potentially impacted by discharges from the Facility should be protected for warmwater aquatic life and agricultural uses. Some water quality samples taken of Logan Creek at Pender, downstream of the Facility, have shown low levels of dissolved oxygen, which can have a detrimental effect on aquatic life. Process wastewater from cattle feedlots can depress the dissolved oxygen levels of surface waters.

26. The continuing runoff of wastewater from Respondent's Facility to the unnamed tributary of Logan Creek during precipitation events constitutes unauthorized discharge of pollutants from a point source to waters of the United States, in violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

Order For Compliance

Based on the Findings of Violation set forth 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:

27. Immediately upon receipt of this Order, Respondent shall take interim measures to reduce the discharge of runoff from the feedlot to waters of the U.S., until Respondent constructs the waste control structures necessary to comply with the Clean Water Act. Examples of possible interim measures include frequent scraping of the feedlot, movement of cattle to areas of the feedlot where the likelihood of discharge is lessened, and reduction in the number of cattle maintained or fed at the Facility. Respondent shall provide written notice to EPA within 15 days of receipt of this Order, describing all interim measures it has taken and will continue to take to reduce discharges until waste control structures are constructed at the Facility.

28. Respondent shall complete construction of waste control structures necessary to comply with the Clean Water Act by October 1, 2003. Respondent shall notify EPA in writing

within 30 days of when construction is completed, and shall include in such notification as-built drawings of the constructed improvements.

29. Beginning upon completion of construction and continuing until such time as EPA makes a final decision regarding Respondent's NPDES permit application, Respondent shall maintain the following operational records: storage facility liquid levels after every event with potential to change the amount of liquid in the storage facility; land application records, including dates, location, amounts applied, and application rates; and precipitation records. Upon issuance of an NPDES permit, Respondent shall maintain records as required by the NPDES permit.

Effect of Order

30. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude 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.

31. 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.

32. Nothing in this Order shall limit 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.

33. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance 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.

34. 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.

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

Paula Higbee
CAFO Enforcement Coordinator
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency – Region VII
901 N. 5th Street
Kansas City, KS 66101

36. 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 Clean Water Act appear in 40 C.F.R. § 2.302.

37. 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 $27,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

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

Date 2/12/03

Carol Kather, Acting Director
Water, Wetlands, and
Pesticides Division

Date 2/10/03

David Cozad
Associate Regional Counsel

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Docket No. CWA-07-2003-0059

CERTIFICATE OF SERVICE

I certify that on the date note 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 VII.

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:

Ron Bruns
Ron Bruns Feedyard - East
Rt. 3, Box 172
Pender, NE 68047

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 Nebraska:

Dennis Heitmann
Supervisor, Agriculture Section
Water Quality Division
Nebraska Department of Environmental Quality
Suite 400, 1200 N Street, The Atrium
Lincoln, NE 68509

Amy Lamarches

2/13/03
Date