

IN THE MATTER OF:

DAVID & PEG BRUCE  
D/B/A BRUCE FEEDLOT  
MILLS COUNTY, IOWA

Respondents,

Proceedings under Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

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) Docket No. CWA-07-2010-0094  
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) CONSENT AGREEMENT AND  
) FINAL ORDER  
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**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region 7 (EPA) and David and Peg Bruce (Respondents), doing business as Bruce Feedlot, 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 Respondents' alleged unauthorized discharges of pollutants into Indian Creek and its tributaries, waters of the United States in Mills 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 Respondents have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by discharging pollutants from a concentrated animal feeding operation (CAFO) into the navigable waters of the United States in a manner that was not in accordance with Respondents' National Pollutant Discharge Elimination System (NPDES) permit.

### 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*, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. An NPDES permitted large CAFO must be designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event. *See* 40 C.F.R. § 412.31(a)(1)(i).

5. The CWA prohibits the unauthorized 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.

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

8. "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.

9. 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).

10. “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.

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

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

13. 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 Sections 301 or 402, 33 U.S.C. §§ 1311 or 1342.

#### Factual Allegations

14. Respondents own and operate an open cattle feedlot that is located in the Southwest ¼ of Section 17 in Township 72 North, Range 40 West, in Mills County, Iowa.

15. On June 5, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility.

16. At the time of the EPA inspection, the Respondents confined approximately 1,300 head of cattle. The Facility is permitted to confine up to 3,000 head of cattle.

17. EPA issued an Administrative Compliance Order (ACO) on July 31, 2009, requiring the Respondents to, among other things: cease all unauthorized discharges to waters of the United States or, in the alternative, reduce the number of cattle confined at the facility below regulatory thresholds until adequate runoff controls are constructed. Based on information provided by the Respondents, they have reduced the number of head below the threshold to be considered a large CAFO.

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

19. The Facility has confined and fed or maintained cattle for a total of 45 days or more in any twelve-month period at all times pertinent to this Consent Agreement and Final Order.

20. Neither crops, vegetation, forage growth, nor post harvest residues were sustained over any portion of the Facility's feeding areas at all times pertinent to this Consent Agreement and Final Order.

21. The Facility was an AFO as defined by 40 C.F.R. § 122.23(b)(1) at all times pertinent to this Consent Agreement and Final Order.

22. At all times pertinent to this Consent Agreement and Final Order, the number of cattle confined and fed at the Facility was greater than 1,000, therefore the facility was a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. At times pertinent to this Consent Agreement and Final Order, Respondents' feedlot did not have adequate runoff controls to prevent the discharge of animal waste to the Indian Creek and its tributaries. As a result, Respondents' Facility was not designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event. 40 C.F.R. § 412.31(a)(1)(i).

24. At times pertinent to the Consent Agreement and Final Order, runoff from the Facility entered Indian Creek and its tributaries. This runoff contained feedlot-related pollutants.

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

26. At times pertinent to this Consent Agreement and Final Order, the Facility was not designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event and the flow of wastewater from Respondents' feedlot to Indian Creek and its tributaries constituted unauthorized discharges of pollutants from a point source to waters of the United States. This was a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

### **CONSENT AGREEMENT**

27. Respondents admit the jurisdictional allegations in this Consent Agreement and Final Order and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

28. Respondents neither admit nor deny the factual allegations contained in this Consent Agreement and Final Order.

29. Respondents waive any right to contest the allegations as well as their right to appeal the proposed Final Order accompanying this Consent Agreement.

30. Respondents and Complainant each agree to bear their own costs and attorney's fees.

31. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Penalty

32. Respondents consent to the issuance of the Final Order and consent to the payment of a civil penalty and interest of Thirty-one Thousand Five Hundred and Seventy-three Dollars and Fifty-six Cents (\$31,573.56). Due to the fact that Respondent will incur significant expense in the construction of livestock waste management controls, EPA permits Respondents to pay the penalty on an installment schedule. The payments shall be as follows:

A. Respondents shall pay an initial installment of Six Thousand Two Hundred and Fifty-Three Dollars (\$6,253) within thirty (30) days of the Effective Date of the Final Order. The remainder of the penalty shall be paid quarterly thereafter in seven installments of Three Thousand Six Hundred Seventeen Dollars and Twenty-two Cents (\$3,617.22) according to the following schedule:

1. \$3,617.22 due on or before October 1, 2010;
2. \$3,617.22 due on or before January 1, 2011;
3. \$3,617.22 due on or before April 1, 2011;
4. \$3,617.22 due on or before July 1, 2011;
5. \$3,617.22 due on or before October 1, 2011;
6. \$3,617.22 due on or before January 1, 2012; and
7. \$3,617.22 due on or before April 1, 2012.

B. Respondents agree that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently one percent per annum for the period January 1, 2010, through December 31, 2010), compounded daily.

C. Respondents agree 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.

D. The parties agree that Respondents shall not be subject to a penalty for early payment of the penalty.

33. Respondents shall submit payment of the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order. 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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 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 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101;

and

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

34. Respondents' 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.

35. The penalty payment made by Respondents 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.

36. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Factual Allegations.

37. Respondents certify by the signing of this Consent Agreement and Final Order that the Facility is operating 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 36 above is conditioned upon the accuracy of this certification.

38. This Consent Agreement and Final Order shall not relieve Respondents of their 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.

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39. 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. Respondents reserve the right to defend against such actions on any basis in law or fact.

40. The undersigned representative of Respondents 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 Respondents to it.

41. The 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 Respondents:**

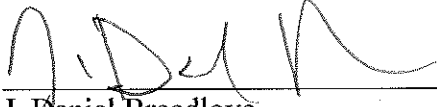
5/21/10  
Date

David Bruce  
David Bruce




**For the United States Environmental Protection Agency - Region 7**

7-28-10  
Date

  
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J. Daniel Breedlove  
Assistant Regional Counsel

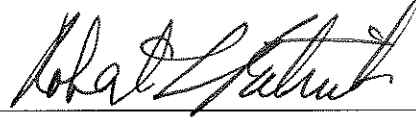
7-28-10  
Date

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

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



ROBERT L. PATRICK  
Regional Judicial Officer

Date: August 10, 2010

IN THE MATTER OF David & Peg Bruce d/b/a Bruce Feedlot, Respondent  
Docket No. CWA-07-2010-0094

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 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

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

and

David and Peg Bruce  
Bruce Feedlot  
37761 Highway 34  
Hastings, Iowa 51540

Dated: 8/11/10



Kathy Robinson  
Hearing Clerk, Region 7