



2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent violated certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

#### Statutory and Regulatory Framework

3. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged from a point source only in accordance with the terms of an NPDES permit issued pursuant to that section.

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Nebraska Department of Environmental Quality (NDEQ) is the agency within the state of Nebraska authorized to administer the federal NPDES program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

6. 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 Section 402 of the CWA, 33 U.S.C. § 1342.

#### Factual Allegations

7. Respondent owns and operates an animal feeding operation (Facility) that is located in the West 1/2, Section 2, Township 28 North, Range 05 West, within Antelope County, Nebraska. The street address of the Facility is 86930 532<sup>nd</sup> Avenue, Creighton, Nebraska. The Facility is comprised of outdoor cattle pens and indoor swine facilities, with a capacity of approximately 2,500 head of feeder cattle, 1,300 nursery swine, and 2,400 swine greater than 55 pounds.

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

9. On April 25, 2012, the EPA conducted an inspection of the Facility pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

10. At all times pertinent to this Consent Agreement and Final Order, the Facility was a “concentrated animal feeding operation” and a “point source” as defined by the CWA and implementing regulations.

11. At all times relevant to this Order, Respondent was operating under a NPDES permit (NE 0135623) which became effective on September 15, 2006, and expired on September 14, 2011. This NPDES permit is administratively extended until NDEQ issues a superseding permit.

#### Alleged Violations

12. The facts stated in Paragraphs 7 through 11, above, are herein incorporated.

#### Failure to Maintain Adequate Records

13. Respondent's NPDES permit requires that Respondent shall maintain production area records, land application area records, waste transfer records, and other records at the facility for a period of five years from the date they are created. These requirements are described in Part II(F) of permit NE 0135623.

14. During EPA's inspection of April 25, 2012, and in subsequent document production efforts since that time, Respondent has been unable to produce records that are required pursuant to the NPDES permit. Specifically, Respondent was unable to produce records associated with the land application of manure and process wastewater, and livestock waste analysis, as required by the NPDES permit.

15. Respondent's failure to maintain records associated with production areas, land application areas, and other records as required by the NPDES permit are violations of Respondent's NPDES permit, and as such, are violations of Section 402 of the CWA.

#### Failure to install required lagoon elevation gauge

16. Respondent's NPDES permit, Part II(G)(1)(b), requires, that a permanent marker (staff gauge or marking device) be installed in each Livestock Waste Control Facility (LWCF) to measure liquid depth within each LWCF, and that critical liquid levels, including freeboard level, must pump level, winter pump down level, and minimum treatment volume level be identified on such markers.

17. Upon EPA inspection in April 2012, no such markers were found in either the north or south LWCF at the facility. Respondent's failure to provide permanent, appropriate markers in the Facility's LWCFs is a violation of Respondent's NPDES permit, and as such, is a violation of Section 402 of the CWA.

**CONSENT AGREEMENT**

18. 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 this Consent Agreement and Final Order.

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

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

21. Respondent and Complainant each agree to bear their own costs and, if applicable, any attorney's fees.

22. Nothing contained in this 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.

23. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of \$5,700.

24. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payments shall be made 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 letters and the checks shall simultaneously be sent to:

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

and

J. Daniel Breedlove  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

25. 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.

26. The penalty payment made by Respondent 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.

27. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

28. Respondent certifies 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 28 above is conditioned upon the accuracy of this certification.

29. This Consent Agreement and Final Order shall not relieve Respondent of its 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.

30. 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.

31. The undersigned representative of 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.

32. 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:**


8-14-13  
Date


Mr. Warren Wortman  
Mr. Warren Wortman

In the Matter of Wortman & Sons  
Consent Agreement/Final Order  
Docket No.: CWA-07-2013-0054

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

10/2/13  
Date


  
\_\_\_\_\_  
Karen Flournoy  
Director  
Water, Wetlands and Pesticides Division

  
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J. Daniel Breedlove  
Senior 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.

  
Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: 10/22/13



IN THE MATTER OF Warren Wortman d/b/a Wortman & Sons Livestock, Respondent  
Docket No. CWA-07-2013-0054

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

breedlove.dan@epa.gov

Copy by First Class Mail to Respondent:

Mr. Warren Wortman  
d/b/a Wortman & Sons Livestock  
86930 532<sup>nd</sup> Avenue  
Creighton, Nebraska 68729

Dated: 10/22/13



Kathy Robinson  
Hearing Clerk, Region 7