

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF**

Miller's Son Shine Acres, Inc.  
1765 Broadway Road  
Darien, New York 14040

**Respondent**

SPDES Permit No. NYA000458

Proceeding pursuant to Section 309(g) of  
the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. CWA-02-2017-3308**

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on June 14, 2017, against Respondent Miller's Son Shine Acres, Inc; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

**II. PROCEDURAL AND FACTUAL BACKGROUND**

1. EPA initiated the instant proceeding against Respondent for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for four violations of two sections the Concentrated Animal Feeding Operation General Permit promulgated pursuant to Section 402 of the CWA in the operation of its concentrated animal feeding operation at 1280 Bennett Road, in Corfu, New York and at 1765 Broadway Road, in Darien, New York.
3. A Public Notice of this matter was published and no comments were received.
4. EPA and Respondent engaged in informal settlement discussions which resulted in this CA/FO.

5. Respondent stipulates that the EPA has jurisdiction over the subject matter alleged in this Complaint. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consent to the terms of this Agreement.
6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

### III. TERMS OF SETTLEMENT

7. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, EPA has determined that **twelve thousand dollars (\$12,000)** is an appropriate civil penalty to settle this action.
8. Respondent consents to the issuance of this CA/FO, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing paragraph.
9. Payments shall be made by one of the following methods:

**By cashier's or certified check**, including the name and docket number of this case, payable to "Treasurer, United States of America," mailed to:

Regular Mail

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Overnight Mail

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

**By Wire Transfer**, directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33

33 Liberty Street  
New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

**Online**, through the Department of Treasury, at [www.pay.gov](http://www.pay.gov). Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

10. Respondent shall also send copies of the checks or payment documentation if payment is made by



Cynthia L. Psoras, Esq.,  
Assistant Regional Counsel Water and General Law Branch  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007

11. The payment must be received at the address set forth in paragraph 9 above on or before forty-five (45) calendar days after the effective date of this Order (the date by which payment must be received shall hereafter be referred to as the "Due Date").
12. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
13. If the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15) will be assessed for each thirty (30) day period (or any portion thereof) following a due date in which an overdue balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of a due date.

In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent will also be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.

14. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

#### **IV. General Provisions**

15. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve the Respondent of its obligation to comply with this CA/FO.

16. Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the complaint.
17. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
18. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with all such laws and regulations.
19. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
20. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.
21. Respondent consents to service upon it by delivery of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

**FOR RESPONDENT:**

BY: *Daniel R Miller, Pres.*  
SIGNATURE

8/17/17  
DATE

DANIEL R MILLER, PRES  
NAME (Please print)

MILLER'S SON SHINE ACRES, INC  
TITLE (Please print)

**FOR COMPLAINANT U.S. EPA:**

*J. Kate LaPosta*  
DORE LAPOSTA

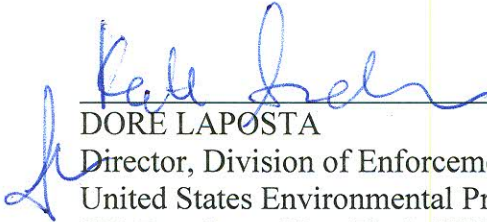
AUG 17 2017  
DATE

Director, Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007  
Miller's Son Shine Acres, Inc.  
Docket No. CWA-02-2017-3308



**IV. FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") has further re-delegated such authority to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, to enter into the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



---

DORE LAPOSTA  
Director, Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency, Region 2  
290 Broadway, New York, NY 10007

**AUG 17 2017**

---

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF**

Miller's Son Shine Acres, Inc.  
1765 Broadway Road  
Darien, NY 14040

Respondent,

**SPDES Permit No. NYA000458**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. CWA-02-2017-3308**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "**Consent Agreement and Final Order**" to:

Daniel Miller  
Miller's Son Shine Acres, Inc.  
1765 Broadway Road  
Darien, NY 14040

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "**Consent Agreement and Final Order**" to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

AUG 21 2017

Date

  
Signature

Marie St. Germain

Print Name

Branch Secretary

Title