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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
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 )  
PITHAN FEEDLOTS, INC. )  
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 )  
 )  
WOODBURY COUNTY, IOWA )  
 )  
 )  
Respondent )  
 )  
 )  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
 )

Docket No. CWA-07-2007-0075

CONSENT AGREEMENT/  
FINAL ORDER

**I. PRELIMINARY STATEMENT**

These proceedings were initiated pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g). On August 14, 2007, the United States Environmental Protection Agency (EPA or Complainant), Region VII issued a Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing (Complaint) to Pithan Feedlots, Inc., (Respondent). The Complaint alleged violations of the CWA by Respondent at its concentrated animal feeding operation located in Woodbury County, Iowa.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

## **II. CONSENT AGREEMENT**

1. For purposes of this proceeding, Respondent admits the jurisdiction of the EPA in this matter and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and the Final Order set forth below.

2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

3. Respondent agrees not to contest the terms and conditions set forth in this CAFO in this or subsequent proceedings to enforce the terms of this CAFO and agrees not to appeal the Final Order set forth below.

4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.

5. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for settlement of the violations set forth in the Complaint is Forty-one Thousand Dollars (\$41,000). Payment of this penalty shall satisfy all claims arising out of the facts alleged in the Complaint.

6. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Forty-one Thousand Dollars (\$41,000). Due to the fact that Respondent has incurred significant expense in the construction of livestock waste management controls, EPA permits Respondent to pay the penalty on an installment schedule. The payments shall be as follows:

A. Respondent shall pay the penalty in two installments. The first installment of Twenty Thousand Five Hundred Dollars (\$20,500) shall be due within thirty (30) days after the effective date of this Consent Agreement and Final Order. The second and final installment of Twenty Thousand Nine Hundred Dollars and Eighty-eight cents (\$20,908.88), that includes principal and accrued interest for a period of six (6) months, shall be due within six (6) months after the due date of the first installment.

B. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently 4 percent per annum for the period January 1, 2007, through December 31, 2007), compounded daily.

C. Respondent agrees that a failure to submit 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 Respondent shall not be subject to a penalty for early payment of the penalty.

7. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by the Respondent as a deduction for federal, state, or local income tax purposes.

8. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this Order may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

9. 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. 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 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

10. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.

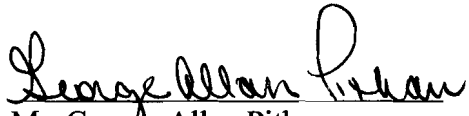
11. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance with the requirements of Sections 301, 308, and 402 of the CWA, 33 U.S.C. § 1311, 1318, and 1342. The effect of the settlement described in paragraph 10 above is conditional upon the accuracy of this certification.

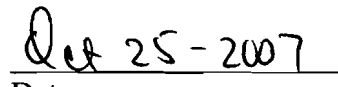
12. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondent reserves the right to defend against such actions on any basis in law or fact.

13. Respondent and EPA each agree to bear their own costs and attorneys' fees.

14. Each signatory of this CAFO certifies he or she is fully authorized to enter into the terms of the CAFO.

**For the Respondent:**

  
Mr. George Allan Pithan  
Pithan Feedlots, Inc.

  
Date

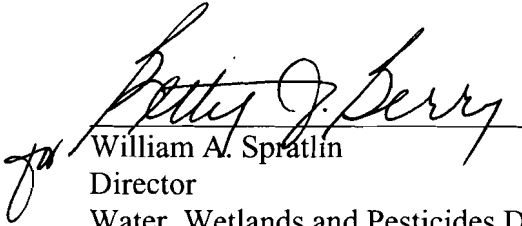
**For the Complainant:**

The United States Environmental Protection Agency



J. Daniel Breedlove  
Assistant Regional Counsel

10/29/2007  
Date



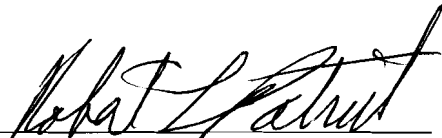
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

10/30/07  
Date

**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.

  
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ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7

Date: *November 9, 2009*

IN THE MATTER OF Pithan Feedlots, Inc., Respondent  
Docket No. CWA-07-2007-0075

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Eldon L. McAfee  
Beving, Swanson & Forrest, P.C.  
Lawyers  
Suite 200 Northwestern Building  
321 East Walnut Street  
Des Moines, Iowa 50309-2048

Dated: 11/13/07

  
Kathy Robinson  
Hearing Clerk, Region 7