

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2011-0011  
)  
)  
DARIN GREEN )  
d/b/a DARIN GREEN FEEDLOT ) CONSENT AGREEMENT AND  
) FINAL ORDER  
)  
Respondent, )  
)  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency, Region 7 (EPA) and Darin Green (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order (“CA/FO”). 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”).

**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 CA/FO serves as notice that EPA has reason to believe that Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 1402, by discharging pollutants from a concentrated animal feeding operation (“CAFO”) into a water of the United States without obtaining a National Pollutant Discharge Elimination System (“NPDES”) permit.

**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 NPDES permit issued pursuant to that Section.

5. Section 502(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 40 C.F.R. § 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(6) 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(14) 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, [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

9. “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.

10. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large AFO in accordance with 40 C.F.R. § 122.23(b)(4).

11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines as many as, or more than, “1,000 cattle other than mature dairy cows or veal calves.”

12. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, an owner or operator of a CAFO must seek coverage under an NPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained so that a discharge will occur. 40 C.F.R. § 122.23(d)(1).

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

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

**Factual Background and Findings of Violation**

15. Respondent owns and operates a cattle feeding operation located in the southeast ¼ of the northeast ¼ of Section 13 in Township 97 North, Range 44 West, in Sioux County, Iowa (Facility). The operation consists of a deep-bedded confinement building and open lot pens.

16. On October 29, 2009, and March 11, 2010, EPA personnel conducted compliance evaluation inspections of the Facility.

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

18. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility’s feeding areas.

19. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).

20. At the time of the October 29, 2009, EPA inspection, the Facility was confining approximately 2,118 head of beef cattle. This total consisted of 972 beef cattle in the Facility’s open pens and 1,146 beef cattle in a deep bedded confinement building. Approximately the same numbers of cattle were confined at the Facility on March 11, 2010.

21. The number of cattle confined and fed at the Facility is greater than 1,000, therefore, the Facility is 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).

22. At the time of the inspections, Respondent did not have an NPDES permit for the Facility.

23. Manure, litter and process waste water from the southern portion (the open pens) of the Facility is uncontrolled and flows into a grassed waterway. This waterway flows east approximately 450 yards before discharging into a tributary of Otter Creek. On March 11, 2010, EPA inspectors observed and sampled discharges of pollutants from the Facility into the tributary of Otter Creek.

24. Otter Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.

25. EPA inspectors observed that the Facility does not have adequate livestock waste control structures to prevent the discharge of manure, litter and process waste water to Otter Creek and its tributaries. EPA inspectors also observed the stockpiling of manure and bedding material containing manure in an area without runoff controls.

26. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Otter Creek and its tributaries, the observed discharges, and the slope and condition of the land across that distance, manure, litter and process waste water will continue to discharge into Otter Creek and its tributaries as a result of significant precipitation events. Respondent's animal feeding operation discharges or proposes to discharge pollutants to waters of the United States.

27. The intermittent yet ongoing flow of process waste water from Respondent's Facility to Otter Creek and its tributaries as a result of significant precipitation events constitutes unauthorized discharges of pollutants from a point source to waters of the United States. This is a violation of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

### **CONSENT AGREEMENT**

28. Respondent admits the jurisdictional allegations in this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

29. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

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

31. Respondent and Complainant each agree to bear their own costs and attorney's fees.

32. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

### **Penalty**

33. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of \$30,000.00. The penalty shall be paid within thirty (30) days of the effective date of this CA/FO. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must include the docket number and the name of the case. The checks must be remitted to:

U.S. EPA Region 7  
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

Chris Muehlberger  
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. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this CA/FO 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. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violations.

36. Respondent certifies by the signing of this CA/FO that Respondent's facility is scheduled to be in compliance with all requirements of Sections 301 and 402 of the CWA, and all regulations promulgated thereunder, pursuant to the terms of EPA's Administrative Compliance Order, docket number CWA-07-2009-0091.

37. 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 CA/FO. Respondent reserves the right to defend against such actions on any basis in law or fact.

38. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

39. 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:**

12/22/10  
Date

Darin Green

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

12/29/10  
Date

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

12.29.10  
Date

Chris Muehlberger  
Chris Muehlberger  
Assistant Regional 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.

Date:

Apr. 4, 2011



ROBERT L. PATRICK  
Regional Judicial Officer

IN THE MATTER OF Darin Green d/b/a Darin Green Feedlot, Respondent  
Docket No. CWA-07-2011-0011

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:

Chris Muehlberger  
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:

Darin Green  
3443 Goldfinch Avenue  
Hull, Iowa 51239

and

Eldon L. McAfee  
Beving, Swanson & Forrest, P.C.  
321E. Walnut, Suite 200  
Des Moines, Iowa 20309

Dated: 4/4/11

  
Kathy Robinson  
Hearing Clerk, Region 7