

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

BEFORE THE ADMINISTRATOR

)  
)  
JIM MOLLER AND DRALS FEEDLOT ) Docket No. CWA-07-2007-0087  
CORPORATION )  
)  
SAC COUNTY, IOWA )  
)  
Respondents ) FINDING OF VIOLATION  
) ORDER FOR COMPLIANCE  
)  
)  
Proceedings under )  
Section 308(a) and 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. §§ 1318(a) and 1319(a)(3) )  
\_\_\_\_\_ )

**Preliminary Statement**

1. The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to the authority of Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA, Region 7, and redelegated to the Director of Region 7’s Water, Wetlands and Pesticides Division.
2. Jim Mollers owns and Drals Corporation Feedlot (“Respondents”) operates an animal feeding operation (“Facility”) that is located in Section 5 of Township 86 North, Range 38 West, in Sac County, Iowa, and has a street address of 3453 Dean Avenue, Odebolt.

**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 National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
5. Section 504(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, the EPA promulgated regulations codified at 40 C.F.R. § 122. Under 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 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 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.”
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. § 2.23(b)(2) as an animal feeding operation that is defined as a Large CAFO in accordance with 40 C.F.R. § 122.23(b)(3).
11. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows or veal calves.”
12. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
13. The Iowa Department of Natural Resources (“IDNR”) is the agency within the state of Iowa with the delegated authority to administer the federal NPDES Program. The EPA

maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

**Factual Background and Findings of Violation**

14. Respondents own or operate an animal feeding operation (“Facility”) that is located in Section 5 of Township 86 North, Range 38 West, in Sac County, Iowa.
15. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve month period.
16. Neither crops, vegetation, forage growth, nor post harvest residues are sustained over any portion of the Facility’s feeding areas.
17. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
18. On April 18, 2007, EPA personnel conducted a compliance evaluation inspection of the Facility.
19. At the time of the EPA inspection, the Facility was confining approximately 1,219 head of cattle. 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).
20. Respondents do not have a NPDES permit to operate the Facility and did not have an NPDES Permit at all times pertinent to this Order.
21. Runoff from Respondents’ feeding area flows west through a cultivated field for 75 yards where it then flows into an unnamed tributary of Odebolt Creek. From this point it flows north northwest for 1.25 miles until it reaches Odebolt Creek
22. Odebolt Creek is a water of the United States, as defined by 40 C.F.R. Part 122.2.
23. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to Odebolt Creek or its tributary.
24. Based on the size of the Facility, the distance from the Facility to Odebolt Creek, and the slope and condition of the land across that distance, wastewater containing pollutants

from open feeding areas at the Facility will continue to flow into Odebolt Creek during precipitation events less than a 25 year, 24 hour storm event.

25. At all times pertinent to this Order, Respondents had a duty to obtain a NPDES permit for the Facility. In particular, Respondents confined greater than 1,000 head of cattle at the Facility in March, 2005, September, 2005, and January through April, 2007, without a NPDES permit.
26. At times, including the periods mentioned in Paragraph 25 above, the flow of wastewater from Respondents' Facility to Odebolt Creek constituted 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 Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and implementing regulations. Furthermore, Respondents' failure to obtain a NPDES permit for the facility is also a violation of Sections 308 and 402 of the Clean Water Act. 33 U.S.C. §§ 1318 and 1342.

### **Order for Compliance**

Based on the Findings of Violation set forth above, and pursuant to Section 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondents are hereby ORDERED to take the following actions to eliminate its violations of the CWA:

27. Respondents shall immediately comply with the Clean Water Act.
28. Respondents shall not repopulate cattle above regulatory thresholds at the Facility unless the Facility can be operated in a manner that maintains compliance with the Clean Water Act.
29. Within 30 days of receipt of this Order, Respondents shall inform the EPA, in writing, of all actions that Respondents have taken to comply with the Clean Water Act and the terms of this Order.
30. Unless Respondents permanently reduce the number of cattle confined at the Facility below regulatory thresholds, Respondents shall obtain a NPDES Permit for the Facility.
31. Upon issuance of the NPDES Permit, Respondents shall comply with all terms contained therein.

32. If Respondents intend to construct runoff control structures to allow the confinement of cattle above regulatory thresholds then beginning thirty (30) days of receipt of this Order and continuing monthly on the seventh day of each month until Respondents submit a Notice of Construction Completion to the EPA, Respondents shall submit written monthly progress reports to the EPA. The monthly reports shall describe, in detail, the construction and related activities that occurred at the Facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how these problems were/will be addressed.
33. Upon completion of runoff control structures Respondents shall submit a Notice of Construction Completion certified by a professional engineer to EPA within thirty (30) days of construction completion. The notification shall be in writing and shall include as-built drawings of the constructed improvements.
34. On a quarterly basis for one year, Respondents shall submit to EPA copies of all inventory records that document the number of cattle confined at the Facility as well as the pen ID/numbers in which they are held. The first quarterly report shall be submitted to EPA on January 7, 2008, and subsequent reports shall be submitted on April 7, 2008, July 7, 2008, and October 7, 2008.

#### **Effect of Order**

35. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state and/or federal permits.
36. Compliance with the terms of this Order shall not relieve Respondents of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief pursuant to Section 309 of the CWA, 42 U.S.C. § 1319.
37. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondents' Facility, and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318.
38. The EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, the EPA may amend this Order to address any noncompliance with the CWA, including, but not limited to, any noncompliance with the requirements of

Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

39. If any provision or authority of this Order or the application of this Order to Respondents is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

40. All submissions to the EPA required by this Order shall be sent to:

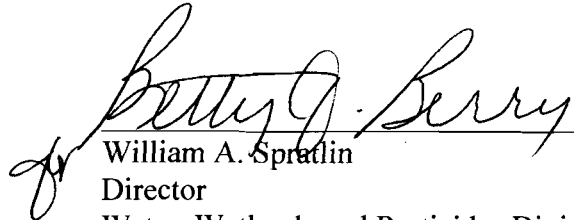
Stephen Pollard  
CAFO Enforcement Program  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

41. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondents may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows the EPA to release the submitted information to the public without further notice. The EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. § 2.302.

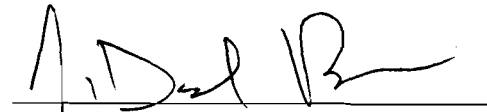
42. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondents to (1) civil penalties of up to \$32,500 per day for each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

43. The terms of this Order shall be effective and enforceable against Respondents upon their receipt of the Order.

Date 09/14/07

  
\_\_\_\_\_  
William A. Spradlin  
Director  
Water, Wetlands and Pesticides Division

Date 9/10/07

  
\_\_\_\_\_  
J. Daniel Breedlove  
Assistant Regional Counsel

**CERTIFICATE OF SERVICE**

I certify that on the date note below I filed the original and one true and correct copy of the signed original Findings of Violation and Order of Compliance with the Regional Hearing Clerk, Region 7.

I further certify that I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance together with cover letter and small business assistance information, to the following address:

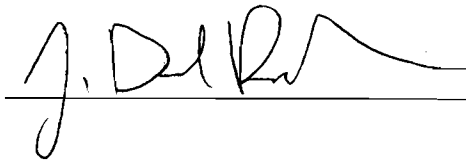
Mr. Jim Moller  
1101 Siemer Drive  
Denison, Iowa 51442

Mr. Kyle Ullrich  
Drals Corporation Feedlot  
1321 390th St  
Kiron, Iowa 51448-8014

Mr. Duddley Ullrich  
Drals Corporation Feedlot  
1568 Hwy 39  
Deloit, Iowa, 51441.

I further certify that on the date noted below, I sent by certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to the following representative of the State of Nebraska:

Kenneth Hessenius  
Field Office Supervisor  
Field Office #3  
Iowa Department of Natural Resources  
1900 North Grand Avenue  
Spencer, Iowa 51301.

  
\_\_\_\_\_

9/14/2007  
Date \_\_\_\_\_