

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2013 DEC 11 AM 8:00

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
COUNTY EDGE DAIRY, INC.	)	Docket No. CWA-07-2013-0061
	)	
Respondent	)	CONSENT AGREEMENT and
	)	FINAL ORDER
	)	
Proceedings under Section 309(a) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)	)	
_____	)	

The United States Environmental Protection Agency (“EPA”), Region 7 (“Complainant”) and County Edge Dairy, Inc. (“Respondent”), have agreed to a settlement of this action before the filing of a Complaint, and 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 (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (“CA/FO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 of the CWA, 33 U.S.C. § 1311, and regulations promulgated thereunder.

### Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. The Respondent, County Edge Dairy, Inc., owns and/or operates an animal feeding operation located in the SW ¼ of the SW ¼ of Section 31, Township 98 North, and Range 47 West, located in Richland Township of Lyon County, Iowa.

### Statutory and Regulatory Framework

5. 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.

6. 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.

7. 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.”

8. 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.

9. “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.

10. “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.”

11. “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.

12. “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).

13. "Large CAFO" is defined according to 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many as, or more than, "700 mature dairy cows, whether milked or dry."

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

15. The Iowa Department of Natural Resources ("IDNR") is the agency within the State of Iowa authorized to administer the federal National Pollutant Discharge Elimination System ("NPDES") Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

### **FACTUAL BACKGROUND AND ALLEGATIONS OF VIOLATION**

16. Respondent owns and operates an animal feeding operation ("Facility") that is located in the SW ¼ of the SW ¼ of Section 31, Township 98 North, and Range 47 West, located in Richland Township of Lyon County, Iowa.

17. The Facility confines and feeds or maintains dairy cows for a total of 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. Inspectors from EPA inspected Respondent's Facility on July 25, 2012 to determine Respondent's compliance with the CWA.

21. At the time of the July 25, 2012 inspection, the Facility was confining approximately 770 head of dairy cows. Facility records indicated between 200 and 250 dairy heifers were also being confined at the main facility. The number of dairy cows confined and fed at the Facility is greater than 700, therefore the Facility is a CAFO as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4).

22. At the time of the July 25, 2012 inspection, Respondent did not have a NPDES permit for the Facility. To date, Respondent has not applied for a NPDES permit.

23. Runoff from Respondent's feeding areas flows through several different discharge paths into two unnamed tributaries of Dry Run Creek. The unnamed tributaries converge southeast of the Facility and flow approximately 4.5 miles to its confluence with Dry Run Creek, a perennial stream.

24. Dry Run Creek and its tributaries are waters of the United States, as defined by 40 C.F.R. § 122.2.

25. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to the unnamed tributaries to Dry Run Creek.

26. Based on the size of the Facility, the distance from the Facility to the unnamed tributaries to Dry Run Creek, and the slope and condition of the land across that distance, wastewater containing pollutants from open feeding areas at the Facility will discharge into the unnamed tributaries to Dry Run Creek as a result of significant precipitation events.

27. The ongoing intermittent flow of wastewater from Respondent's Facility to the unnamed tributaries to Dry Run Creek 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 Clean Water Act, 33 U.S.C. §§1311 and 1342, and implementing regulations.

### **CONSENT AGREEMENT**

28. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

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

30. Respondent neither admits nor denies the factual allegations set forth above.

31. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.

32. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

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

34. Nothing contained in the Final Order portion of this 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.

35. This CA/FO addresses all civil and administrative claims for the alleged CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

36. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, it is in compliance with all requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and all regulations promulgated thereunder.

37. The effect of settlement described in paragraph 38 below is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 36 of this CA/FO.

38. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$20,000 as set forth in paragraph 1 of the Final Order.

39. Respondent understands that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

### **FINAL ORDER**

#### **Payment Procedures**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of \$20,000 within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

This payment shall reference docket number the CWA-07-2013-0061.

Copies of the check shall be mailed to:

Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

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

Parties Bound

3. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

General Provisions

4. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

5. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

6. This 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) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

7. Respondent and Complainant shall bear their respective costs and attorney's fees.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

10-23-13  
Date

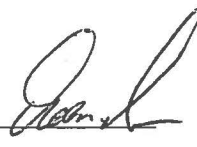
Karen A. Flournoy  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

10.23.13  
Date

Chris Muehlberger  
Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel

RESPONDENT:  
COUNTY EDGE DAIRY, INC.

9-27-13  
Date

County Edge Dairy, Inc 

Name (Print) Darren Davelaar

Title vice president



IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

12-10-13  
Date

IN THE MATTER OF County Edge Dairy, Inc., Respondent  
Docket No. CWA-07-2013-0061

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:

[muehlberger.christopher@epa.gov](mailto:muehlberger.christopher@epa.gov)

Copy by First Class Mail to:

Eldon McAfee, Esq.  
Beving Swanson and Forrest, P.C.  
321 East Walnut Street, Suite 200  
Des Moines, Iowa 50309

Dated: 12/11/13



Kathy Robinson  
Hearing Clerk, Region 7