



## 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 Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation into the navigable waters of the United States without obtaining the necessary permit(s) required by Section 402 of the CWA, 33 U.S.C. § 1342.

### Statutory and Regulatory Framework

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. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit.

4. The CWA prohibits the unpermitted discharge of “pollutants” by any “person” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. “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.

6. “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.”

7. An “animal feeding operation” 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.

8. According to 40 C.F.R. § 122.23(b)(2) a “concentrated animal feeding operation” is an animal feeding operation that meets the definition of either a Large CAFO or Medium CAFO under 40 C.F.R. § 122.23(b)(4) or 40 C.F.R. § 122.23(b)(6).

9. “Large CAFO” is defined by 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation where at least “1,000 cattle other than mature dairy cows or veal calves” are stabled or confined.

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

11. 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.

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 301, 33 U.S.C. § 1311.

#### Factual Allegations

13. 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.

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

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

16. 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).

17. On April 18, 2007, EPA personnel conducted a compliance evaluation inspection of the Facility.

18. 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 was 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).

19. 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.

20. 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

21. Odebolt Creek and its tributary are waters of the United States, as defined by 40 C.F.R. Part 122.2.

22. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to Odebolt Creek or its tributary.

23. 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 significant precipitation events.

24. 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.

25. At times, including the periods mentioned in Paragraph 24 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.

#### Alleged Violations

26. The allegations set forth in paragraphs 1 through 25 are incorporated herein.

27. Respondents are persons as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

28. The Facility is a "concentrated animal feeding operation" as defined by 40 C.F.R. § 122.23(b)(4)(iii), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14). As a result, the Facility is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. The number of cattle confined and fed at the Facility were above the threshold defined in 40 C.F.R. § 122.23(b)(4)(iii) for Large CAFOs.

30. Odebolt Creek and its unnamed tributary are waters of the United States, as defined by 40 C.F.R. Part 122.2.

31. Wastewater runoff, which is discharged from the Facility into Odebolt Creek and its tributary during and after precipitation events, contain "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

32. Respondents' Facility discharged wastewater into Odebolt Creek and its tributary. Respondents' discharges constitute unauthorized discharges of pollutants from a point source to waters of the United States. This, coupled with Respondents not having an NPDES permit resulted in violations of Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and 1342, and implementing regulations.

### CONSENT AGREEMENT

33. Respondents admit the jurisdictional allegations in this Consent Agreement and Final Order and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement and Final Order.

34. Respondents neither admit nor deny the factual allegations contained in this Consent Agreement and Final Order.

35. Respondents waive any right to contest the allegations as well as their rights to appeal the proposed Final Order accompanying this Consent Agreement.

36. Respondents and Complainant each agree to bear their own costs and attorney's fees.

37. Nothing contained in the Consent Agreement and Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

38. Respondents consent to the issuance of the Final Order and consent to the payment of a civil penalty of Six Thousand Three Hundred dollars (\$6,300).

39. 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 VII  
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 VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

40. Respondents' failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order 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.

41. This Consent Agreement and Final Order disposes of all civil and administrative penalty claims for all the CWA violations identified herein.

42. 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 41 above is conditional upon the accuracy of this certification.

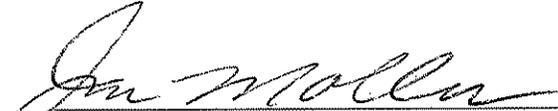
43. The EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement and Final Order. Respondents reserve the right to defend against such actions on any basis in law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

44. The undersigned representatives of the Respondents certify that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondents to it.

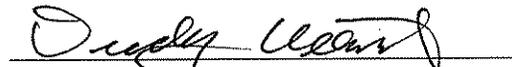
45. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

**For the Respondents:**

10-29-07  
Date

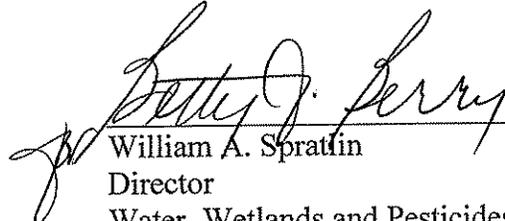
  
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Jim Moller

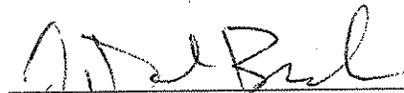
11-5-07  
Date

  
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Dudley Ullrich  
Drals Feedlot Corporation

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

12/05/07  
Date

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

  
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J. Daniel Breedlove  
Assistant Regional Counsel

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are 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 VII

Date: December 10, 2007

IN THE MATTER OF, Jim Moller and Drals Feedlot Corporation, Respondent  
Docket No. CWA-07-2008-0001

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 Certified Mail Return Receipt to:

Mr. Dudley Ullrich  
Drals Corporation Feedlot  
1568 HWY 39  
Deloit, Iowa 51441

Dated: 12/10/07



Kathy Robinson  
Hearing Clerk, Region 7