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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

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

**BEFORE THE ADMINISTRATOR**

Mike Millenkamp	)	
	)	
d/b/a Mike Millenkamp Dairy Cattle	)	Docket No. CWA-07-2011-0103
2605 137 <sup>th</sup> Street	)	
Earlville, Iowa 52041	)	
	)	
Respondent	)	FINDING OF VIOLATION
	)	ORDER FOR COMPLIANCE
	)	
Proceedings under	)	
Sections 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 Section 308(a) and Section 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 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. The Respondent, Mike Millenkamp doing business as Mike Millenkamp Dairy Cattle (“Respondent”), owns and/or operates an animal feeding operation located in the northwest ¼ of Section 23 in Township 90 North, Range 4 West, in Delaware County, Iowa.

**Statutory and Regulatory Authority**

3. Section 308(a)(B) grants EPA inspectors the right of entry to, upon, or through any premises in which an effluent source is located. 33 U.S.C. §1318(a)(B). This right of access includes the right to have access to and copy any records, inspect any monitoring equipment, and sample any effluents. *See* 33 U.S.C. §1318(a)(B)(ii).
4. “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.
5. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.
6. 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**

7. Respondent owns and/or operates an animal feeding operation that is located in the northwest ¼ of Section 23 in Township 90 North, Range 4 West, in Delaware County, Iowa.
8. On August 23, 2011, EPA personnel attempted to conduct a compliance evaluation inspection of the Facility. The EPA inspector telephoned Respondent at his home around 6:30 p.m. on August 22, 2011. During the telephone call the Respondent informed the inspector that Respondent was unwilling to allow the inspector to access to inspect the Facility and asked to speak to his supervisor. At approximately 10:00 a.m. on August 23, 2011, the inspector’s supervisor discussed EPA’s access authority and possible ramifications of denying inspection access with the Respondent. The inspector arrived at the Facility at approximately 1:30 p.m. the same day. The inspector informed Respondent as to who he was and why he was at Respondent’s Facility. Respondent stated that he was aware of EPA’s inspection authority but nevertheless denied access for the inspection. Despite the denial, Respondent allowed the inspector a cursory viewing of the Facility. During this viewing the EPA inspector observed signs of an effluent discharge and was informed by Respondent that the Facility has a discharge point through which effluent discharges toward Schechtman Branch. However, Respondent would not

allow the inspector close enough to view the discharge point. Moreover, Respondent denied the inspector access to sample or photograph the Facility, including areas where the Facility discharges effluent toward Schechtman Branch.

9. Schechtman Branch and its tributaries are waters of the United States, as defined in 40 C.F.R. §122.2. IDNR has classified portions of Schechtman Branch as a Class B(CW1) water. Class B(CW1) waters are waters in which the temperature and flow are suitable for the maintenance of a variety of cold water species, including reproducing and nonreproducing populations of trout (*Salmonidae* family) and associated aquatic communities.
10. The Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1).
11. Respondent's denial of EPA's right of access to inspect and sample the effluent source was a violation of 308 of the Clean Water Act, 33 U.S.C. § 1318.

#### **Order for Compliance**

Based on the Findings of Violation set forth in paragraphs 8 through 11 above, and pursuant to Sections 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby ORDERED to take the following actions to eliminate its violations of the CWA:

12. Upon presentation of EPA inspector credentials, Respondent shall grant the right of entry to, upon, or through his animal feeding operation, an effluent source, for inspection by EPA personnel. Such access shall include, but not limited to, at reasonable times, access to facility records and locations to sample effluent generated at and emanating from Respondents animal feeding operation.

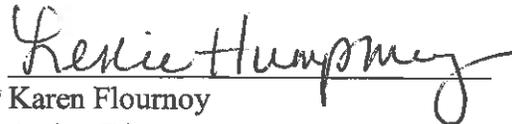
#### **Effect of Order**

13. 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.
14. Compliance with the terms of this Order shall not relieve Respondent 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.

15. 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.
16. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance 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.
17. 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.
18. 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 EPA to release the submitted information to the public without further notice. 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 CWA appear in 40 C.F.R. § 2.302.
19. 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 \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

20. The terms of this Order shall be effective and enforceable against Respondent upon his receipt of the Order.

August 24, 2011  
Date

  
for Karen Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

  
J. Daniel Breedlove  
Assistant Regional Counsel

**CERTIFICATE OF SERVICE**

I certify that on the date noted 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 Records Clerk, Region 7.

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 Iowa:

Mr. Joe Sanfilippo  
Iowa Department of Natural Resources  
Field Office #1  
909 West Main Street  
Manchester, Iowa 52057

  
\_\_\_\_\_  
Dan Breedlove

8/24/11  
\_\_\_\_\_  
Date

I certify that on the date noted below I hand delivered one true and correct copy of the signed original Findings of Violation and Order of Compliance to the following:

Mike Millenkamp  
Mike Millenkamp Dairy Cattle  
2605 137<sup>th</sup> Street  
Earlville, Iowa 52041

  
\_\_\_\_\_  
Trevor Urban

8/25/2011  
\_\_\_\_\_  
Date