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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

IN THE MATTER OF: )  
)  
) Docket No. CWA-07-2010-0096  
)  
JEWELL COUNTY FEEDERS, LLC )  
)  
MANKATO, KANSAS ) 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 Jewell County Feeders, LLC, (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).

This CA/FO completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged violations of the National Pollutant Discharge Elimination System (NPDES) permit for Respondent's feedlot in Jewell County, Kansas.

## 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 certain conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

### Statutory and Regulatory Framework

3. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged from a point source only in accordance with the terms of an NPDES permit issued pursuant to that section.

4. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, NPDES permits may contain enforceable operating, monitoring, and recordkeeping requirements.

5. The Kansas Department of Health and Environment (KDHE) is the agency within the State of Kansas authorized to administer the federal NPDES Program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and a Memorandum of Understanding between EPA and KDHE. EPA maintains concurrent enforcement authority with delegated state NPDES programs for violations of the CWA.

6. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to commence an action for administrative penalties against any person who violates Section 402 of the CWA, 33 U.S.C. § 1342.

### Factual Allegations

7. Respondent owns and operates an animal feeding operation (Facility) that is located in the Southwest ¼ of Section 10, Township 3 South, Range 9 West, in Jewell County, Kansas.

8. Respondent is a limited liability company and therefore a person as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

9. On August 19, 2009, EPA personnel conducted a compliance evaluation inspection of the Facility.

10. At the time of the inspection, the Facility was confining and feeding approximately 4,500 head of beef cattle. Respondent's Facility is a "concentrated animal feeding operation" and a "point source" as defined by the CWA and implementing regulations.

11. KDHE issued an NPDES permit (KS0119695) to the Facility on October 3, 2005. The NPDES permit expires on October 2, 2010.

12. EPA issued an Administrative Compliance Order on February 16, 2010, requiring Jewell County Feeders to correct NPDES permit violations identified during the inspection.

#### Alleged Violations

13. The allegations set forth in paragraphs 1 through 12 are incorporated herein.

14. The NPDES permit states, among other things, that solids such as manure may be stockpiled temporarily (not to exceed six months) but the stockpiles shall be located in areas not subject to uncontrolled runoff or leaching.

15. During the EPA inspection referenced in paragraph 9 above, EPA inspectors observed that Respondent had placed stockpiles of manure located northwest of pen 76 and west of Respondent's west lagoon. Inspectors observed that the stockpiles were accumulated in areas that lacked runoff controls. Based on statements by the facility owner, the stockpile near pen 76 had been at this location since June of 2009. The failure to stockpile manure in a manner required by the NPDES permit is a violation of Respondent's permit and, as such, is a violation of Section 402 of the CWA.

#### CONSENT AGREEMENT

16. 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.

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

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

19. Respondent and Complainant each agree to bear their own costs and, if applicable, any attorney's fees.

20. Nothing contained in 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.

21. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Ten Thousand Eight Hundred and Forty Dollars and Forty-Eight cents (\$10,840.48). EPA permits Respondent to pay the penalty on an installment schedule. The penalty sum includes a base penalty of Ten Thousand Eight Hundred Dollars (\$10,800) plus pre-calculated interest. The payments shall be as follows:

A. Respondent shall pay an initial installment of Two Thousand Seven Hundred and Ten Dollars and Twelve Cents (\$2710.12) within thirty (30) days of the Effective Date of the Final Order. The remainder of the penalty shall be paid quarterly thereafter in three installments of Two Thousand Seven Hundred and Ten Dollars and Twelve Cents (\$2710.12).

B. Respondent agrees that interest shall accrue on the outstanding balance at the rate determined by the Secretary of the Treasury (currently one percent per annum for the period January 1, 2010, through December 31, 2010), compounded daily.

C. Respondent agrees that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

D. The parties agree that Respondent shall not be subject to a penalty for early payment of the penalty.

22. Respondent shall initiate payment of the penalty within thirty (30) days of the Effective Date of this CA/FO. Payments 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. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

Copies of the transmittal letters and the checks 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

J. Daniel Breedlove  
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.

23. 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.

24. The penalty payment made by Respondent pursuant to this CA/FO is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

25. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Alleged Violations.

26. Respondent certifies by the signing of this CA/FO that the Facility is operating 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 25 above is conditioned upon the accuracy of this certification.

27. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

28. 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.

29. 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.

In the Matter of Jewell County Feeders, LLC  
Consent Agreement/Final Order

30. 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.

In the Matter of Jewell County Feeders, LLC  
Consent Agreement/Final Order


For the Respondent:

5-17-2010  
Date


Jewell Co Feeders LLC  
Randy R Dean  
Randy R. Dean

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

7/8/2010  
Date

  
J. Daniel Breedlove  
Assistant Regional Counsel

7/10/10  
Date

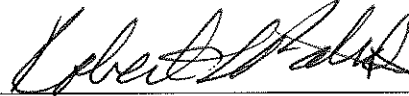
  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division



**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.



ROBERT L. PATRICK  
Regional Judicial Officer

Date: July 13, 2010

IN THE MATTER OF Jewell County Feeders, LLC, Respondent  
Docket No. CWA-07-2010-0096

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 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Randy R. Dean  
Jewell County Feeders, LLC  
1026 Q Road  
Mankato, Kansas 66956

Dated: 7/14/10

  
Kathy Robinson  
Hearing Clerk, Region 7