

US EPA ARCHIVE DOCUMENT

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

IN THE MATTER OF:	)	
	)	
	)	Docket No. CWA-07-2014-0075
	)	
Central Feeders, Incorporated	)	
	)	
Overton, Nebraska	)	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 U.S. Environmental Protection Agency, Region 7 (EPA) and Central Feeders, Inc. (Respondent), have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. 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 Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent’s alleged violations of the Clean Water Act at Respondent’s beef cattle feedlot near Overton, Nebraska.

**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 Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation (CAFO) into navigable waters of the United States.

### 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*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized, and establish design, construction, operation, and maintenance requirements for the permit holder.

5. 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.

6. Section 504(12) of the CWA, 33 U.S.C. § 1362(1), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, among other things, 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. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 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.

10. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

11. “Production Area” is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

12. “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.

13. “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 CAFO in accordance with 40 C.F.R. § 122.23(b)(4).

14. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4) as an animal feeding operation that stables or confines as many more than “1,000 cattle other than mature dairy cows or veal calves.”

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

16. The Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the state of Nebraska authorized to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

17. 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 of the CWA, 33 U.S.C. § 1311.

Factual Allegations

18. Respondent owns or operates an animal feeding operation (“Facility”) that is located in Section 28 of Township 09 North, Range 19 West, in Dawson County, Nebraska, and has a street address of 75161 Road 447, Overton, Nebraska. The Facility has a maximum capacity of 2500 head of beef cattle confined in open-lot pens or winter feeding areas.

19. On June 13, 2012, EPA personnel conducted a compliance evaluation inspection of the Facility. At the time of the EPA inspection, the Facility was confining approximately 837 head of cattle. During the inspection Respondent stated that approximately 1,100-1,200 head of cattle have been confined within the open pens at the Facility for 80-150 days each of the last three to five years.

20. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over any portion of the Facility that confines animals. Any vegetation that may have been present was incidental.

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

22. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).

23. The number of cattle confined and fed at the Facility was greater than 1,000 for 45 days or more during a twelve month period, therefore the Facility was/is a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(4) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The EPA inspector observed that the Facility lacks adequate engineered livestock waste control facilities (LWCFs). The inspector observed that a number of pens drain to “wet basins” adjacent to Buffalo Creek. However, the basins are not engineered nor are they operated or maintained to prevent all discharges from production areas to Buffalo Creek. The inspector also observed that Respondent uses Mud Creek as a “wet basin” to capture process wastewater runoff from portions of the Facility production areas.

25. Buffalo Creek and Mud Creek are immediately adjacent to Facility production areas. The Facility lacks adequate runoff controls to prevent process wastewater discharges to Buffalo and Mud Creeks.

26. Buffalo Creek and Mud Creek are waters of the United States, as defined by 40 C.F.R. Part 122.2.

27. The Facility does not have adequate livestock waste control facilities to prevent the discharge of animal waste to Buffalo Creek and/or Mud Creek.

#### Alleged Violations

28. The allegations set forth in paragraphs 1 through 27 are incorporated herein.

29. 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.

30. Based on the size of the Facility, the lack of adequate runoff control structures, the distance from the Facility to Buffalo Creek and Mud Creek, the slope and condition of the land across that distance and observed discharges, manure, litter and process wastewater discharged into Buffalo Creek and Mud Creek as a result of significant precipitation events.

31. The intermittent flow of process wastewater from Respondent's Facility to Buffalo Creek and Mud Creek as a result of significant precipitation events constituted unauthorized discharges of pollutants from a point source to waters of the United States. The unauthorized discharges are violations of Sections 301 of the Clean Water Act, 33 U.S.C. §1311, and implementing regulations.

#### CONSENT AGREEMENT

32. Solely for the purpose of this proceeding, and to fully resolve the EPA's allegations without the need for a trial, Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

33. Respondent neither admits nor denies the factual allegations or the violations alleged in this Consent Agreement and Final Order.

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

35. Respondent and EPA shall each agree to bear their own costs and, if applicable, any attorney's fees.

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

37. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Thirty-eight Thousand Nine Hundred and Eleven Dollars (\$38,911).

38. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payments shall be made 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:

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  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

J. Daniel Breedlove  
Senior Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

39. Respondent's 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.

40. Penalty payments made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

41. Respondent certifies by the signing of this Consent Agreement and Final Order that the Facility is operating in compliance with the requirements of Sections 301 of the CWA, 33 U.S.C. §§ 1311. The effect of the settlement described in paragraph 42 below is conditioned upon the accuracy of this certification.

42. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States and Respondent's liability for civil penalties based on the Alleged Violations and Factual Allegations in this Consent Agreement and Final Order.

43. This Consent Agreement and Final Order 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.

44. 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. Respondent reserves the right to defend against such actions on any basis in law or fact.

45. The undersigned representative of Respondent certifies that he/she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

46. 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.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

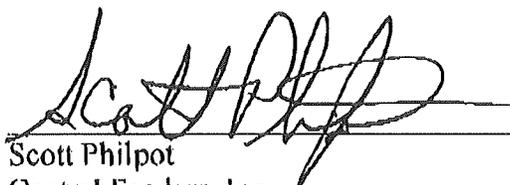
\_\_\_\_\_  
Date

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

\_\_\_\_\_  
J. Daniel Breedlove  
Senior Counsel  
Office of Regional Counsel

**For the Respondent:**

6-4-14  
Date

  
\_\_\_\_\_  
Scott Philpot  
Central Feeders, Inc.

**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.

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

Date: \_\_\_\_\_

6. Counsel for Plaintiffs made several oral and written attempts to resolve Defendant's objection, including an email dated March 18, 2014 which is attached hereto as Exhibit "E" and incorporated herein by reference and by letter emailed on May 9, 2014 which is attached hereto as Exhibit "F" and incorporated herein by reference.

7. Defendants Aslan Financial Group, Inc. and Edward J. Jarzowski have denied each request. Attached hereto as Exhibits "G" and "H" and incorporated herein by reference are responses from counsel for the Defendants dated March 18, 2014 and May 14, 2014.

8. The requested documents are relevant and essential to Plaintiff's case.

WHEREFORE, Plaintiff requests an Order compelling Defendants Aslan Financial Group, Inc. and Edward J. Jarzowski to answer the Requests for Production of Documents in their entirety, and for reasonable attorney's fees and costs related to the filing of this motion pursuant to Neb. Ct. R. Disc. § 6-337(a)(4).

MRN SQUARED, LLC, Plaintiff

By: \_\_\_\_\_

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