

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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| IN THE MATTER OF: |) | |
| |) | |
| |) | Docket No. CWA-07-2011-0106 |
| |) | |
| MIKE MILLENKAMP |) | |
| d/b/a MIKE MILLENKAMP DAIRY CATTLE |) | |
| EARLVILLE, IOWA |) | 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 Mike Millenkamp (Respondent), doing business as Mike Millenkamp Dairy Cattle, have agreed to a settlement of the alleged violation 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 violation of Section 308(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1318.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), 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 308(a) of the CWA, 33 U.S.C. § 1318.

Statutory and Regulatory Framework

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 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. 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 non-reproducing 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 AFO is an effluent source.

Alleged Violations

12. The allegations set forth in paragraphs 1 through 11 are incorporated herein.

13. Respondent's denial of EPA's right of access to inspect and sample the effluent source was a violation of Section 308 of the CWA, 33 U.S.C. § 1318.

CONSENT AGREEMENT

13. 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.

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

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

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

17. 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.

18. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Three Thousand Dollars (\$3,000).

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

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 5th 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 5th Street
Kansas City, Kansas 66101.

20. 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.

21. The penalty payment 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.

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

23. This Consent Agreement and Final Order shall not relieve Respondent of his 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.

24. 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.

25. 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.

26. 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 Respondent:

Date

Mr. Mike Millenkamp

For the United States Environmental Protection Agency - Region 7

J. Daniel Breedlove
Senior Counsel

Date

Karen Flournoy
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: _____