UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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

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| IN THE MATTER OF: | ) | Docket No. CWA-07-2014-0081 |
| E&M FARMS, Inc. | ) | |
| Ossian, 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 U.S. Environmental Protection Agency, Region 7 (EPA) and E&M Farms, 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 (CWA) at Respondent's dairy operation near Ossian, Iowa.

## 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 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, 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. "Medium CAFO" is defined according to 40 C.F.R. § 122.23(b)(6) as an animal feeding operation that stables or confines "200 to 699 dairy cattle and either of the following conditions are met:

a. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

b. Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation."

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 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.

17. 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 301 of the CWA, 33 U.S.C. § 1311.

## Factual Allegations

18. Respondent owns and/or operates a feedlot (Facility) that is located in the northeast ¼ of the northeast ¼ of Section 32 in Township 96 North, Range 08 West, in Winneshiek County, Iowa.

19. On March 18, 2014, EPA personnel conducted a compliance evaluation of the Facility. During the inspection, the inspectors observed and sampled process wastewater from the facility discharging into Dry Branch. Sample results demonstrate that the process wastewater contained, among other pollutants, high concentrations of nutrient, chloride and *Escherichia coli* bacteria. The inspectors also observed that process wastewater from production areas (e.g., the open lot, barns #3 - #4, dry-cow loafing area and cattle alley/walkway) flowed through a culvert directly into Dry Branch. Inspectors also observed that the Facility's feedstock storage area drains toward and into a plastic tile drain that discharges process wastewater into Dry Branch.

20. The culvert is a man-made ditch, flushing system or similar man-made device pursuant to 40 C.F.R. § 122.23(b)(6).

21. Dry Branch has been identified as a perennial stream by the U.S. Geological Survey and is a water of the United States, as defined in 40 C.F.R. § 122.2.

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

23. Crops, vegetation, forage growth, and post harvest residues are not sustained over any portion of the Facility's feeding areas.

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

25. At all times pertinent to this Order, the number of dairy cattle confined and fed at the Facility was between 200 and 699 and pollutant discharges from the Facility were facilitated by a man-made ditch, flushing system or other man-made conveyance. Therefore, the Facility is a medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

26. Respondent does not have a NPDES permit for the Facility.

## Alleged Violations

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

28. 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.

29. Based on the size of the Facility, the presence of the culvert that facilitates the flow of process wastewater, the lack of adequate runoff control structures, the distance from the Facility to Dry Branch, the slope and condition of the land across that distance and observed discharges; manure, litter and process wastewater discharged into Dry Branch as a result of significant precipitation events.

30. The intermittent flow of process wastewater from Respondent's Facility to Dry Branch 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 CWA, 33 U.S.C. §1311, and implementing regulations.

## CONSENT AGREEMENT

31. Solely for the purpose of this proceeding, and to fully resolve 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.

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

33. 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.

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

35. 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.

36. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of Nine Thousand Dollars ($9,000).

37. 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 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
Office of Regional Counsel
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.

38. 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.

39. 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.

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

41. 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.

42. 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.

43. 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.

44. 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.

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.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

1-9-15
Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

J. Daniel Breedlove
Senior Counsel

**For the Respondent:**

9-25-14
Date

E+M Farms Inc By Roger Egeland
Roger W. Egeland
E&M Farms, 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

Karina Borromeo
Regional Judicial Officer

Date: 1-15-15

IN THE MATTER OF E & M Farms, Inc., Respondent
Docket No. CWA-07-2014-0081

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

breedlove.dan@epa.gov

Copy by First Class Mail to:

Mr. Rober W. Egeland, Registered Agent
E & M Farms, Inc.
1953 105th Street
Ossian, Iowa 52161

Dated: 1/15/15

Kathy Robinson
Hearing Clerk, Region 7