UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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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-07-2012-0030 |
| MONROE BRANSTAD<br>D/B/A BRANSTAD FARMS - FEEDLOT | |
| Forest City, 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 Monroe Branstad, doing business as Branstad Farms - Feedlot (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 National Pollutant Discharge Elimination System (NPDES) permit for Respondent's feedlot in Forest City, 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 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 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 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.

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, Southwest ¼, Section 24, Township 97 North, Range 24 West, in Hancock County, Iowa. The Facility has a total animal capacity of approximately 2,500 head of beef cattle and is comprised of outdoor cattle pens and a confinement building.

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

9. On September 13, 2011, EPA personnel conducted a compliance evaluation inspection of the Facility.

10. At all times pertinent to this Consent Agreement and Final Order, the Facility was a "concentrated animal feeding operation" and a "point source" as defined by the CWA and implementing regulations.

11. At all times relevant to this Order, Respondent was operating under an NPDES permit (IA0082465) which was issued on September 2, 2009 and expires on September 1, 2014.

## Alleged Violations

### Failure to install required lagoon elevation gauge

12. Section III (A) (4) (b) of Respondent's NPDES permit requires that all open surface liquid impoundments must have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation from a 25 year, 24 hour rainfall event.

13. During the EPA inspection referenced in paragraph 9 above, inspectors noted that the Settled Open Feedlot Effluent Basin (SOFEB) did not have a staff gauge.

14. Respondent's failure to install a depth marker in its open surface liquid impoundment is a violation of its NPDES permit, and as such, is a violation of Section 402 of the CWA.

### Failure to Adequately Sample Soil, Manure, and Process Waste Water

15. Section V(A)(5) of Respondent's NPDES permit requires that manure must be analyzed a minimum of once annually for nitrogen and phosphorous. This NPDES permit section also requires that soil samples must be taken at least once every four years from each field in the nutrient management plan.

16. Based on information and Facility records provided during the EPA inspection, as well as records obtained subsequent to the inspection, Respondent failed to sample and analyze manure solids destined for land application in 2010 and 2011. Without conducting the required analyses, Respondent was unable to calculate application rates that ensured application of manure at agronomic rates, as also required by the NPDES permit.

17. Respondent's failures to sample and analyze the manure are violations of the NPDES permit and, as such, are violations of Section 402 of the CWA.

### Failure to Submit Quarterly and Annual Reports

18. Section VI (A) of Respondent's NPDES permit establishes that all monitoring results shall be reported to IDNR on a quarterly basis. Section VI (B) requires that Respondent must submit an annual report to IDNR that contains, among other things, operational data such as estimated amount of total manure generated, total manure transferred, etc.

19. The EPA inspection and a review of Facility records documented that Respondent had not completed nor submitted quarterly reports in 2010 and 2011 or an annual report in 2010 as mandated by the NPDES permit.

20. Respondent's failure to complete quarterly and annual reports as required by the NPDES permit are violations of Respondent's NPDES permit and, as such, is a violation of Section 402 of the CWA.

## CONSENT AGREEMENT

21. 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.

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

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

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

25. 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.

### Supplemental Environmental Project (SEP)

26. Respondent shall expend a minimum of $26,200 (Total SEP Expenditure) in approvable costs to enroll and restore wetlands on Branstad Farms property pursuant to the U.S. Department of Agriculture Natural Resource Conservation Service Wetland Reserve Program. Approvable costs shall only include costs directly related to the construction of the SEP and the value of property (determined by the parties to be valued at $2,500 per acre based upon NRCS fair market value survey for Winnebago and Hancock County, Iowa) placed under perpetual easement pursuant to the requirements of this Order. However, if financial assistance is available from NRCS, Respondent agrees to forego an amount equivalent to the Total SEP Expenditure and EPA agrees that such foregone assistance shall be an approvable cost. For the purposes of this Agreement only, Branstad Farms property is defined to include real estate owned or controlled by Respondent or real estate owned or controlled by immediate Branstad family members also involved in the operation of the Facility and operated as the Branstad Farms farming operation.

27. Respondent shall enroll under a perpetual easement in the Wetland Reserve Program and restore such property pursuant to NRCS standards and requirements. Beginning the effective date of this Order and continuing until NRCS approves completion of the SEP, Respondent shall provide quarterly status reports to EPA. The quarterly report shall provide the

actual work performed during the reporting period along with any encountered problems and/or expected delays. Respondent shall provide notice of completion that includes a certification by an NRCS or NRCS-approved consultant, copies of as built plans, and itemized documentation of the costs incurred by Respondent to EPA upon completion of the SEP. The costs shall be certified as accurate by the Respondent.

28. Upon receipt of the notice of completion, EPA will evaluate the cost documentation provided by Respondent and make a determination as to the sum of the approvable costs incurred by the Respondent. This determination shall be within the sole discretion of the EPA but approved costs shall include the fair market value of the work performed determined by competitive bidding for the work, the surrendered NRCS assistance described in paragraph 26 of this order and the value of any land placed under perpetual easement. Upon satisfactory completion of the SEP, EPA will provide Respondent with written notification that the SEP has been completed.

29. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

30. Any public statement in print, film or other communications media, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

## Stipulated Penalties for Non-Performance of SEP

31. In the event Respondent fails to satisfactorily complete the SEP the Respondent shall pay a stipulated penalty not to exceed $17,449. Failure to complete the SEP by October 31, 2014 will result in a stipulated penalty of $17,449. However, the parties agree that EPA may extend the completion date if federal agencies delay awarding permits and approvals provided Respondent has demonstrated good faith efforts to timely submit necessary applications and information. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed $17,449 that shall be based upon a pro-rata share of the costs incurred to implement the SEP in relation to the portion of the penalty mitigated by the SEP (i.e.,

$17,449 multiplied by the percentage of unexpended costs in relation to the Total SEP Expenditures).

32. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

33. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The payment shall be in accordance with the provisions of Paragraph 35.

Penalty

34. Respondent consents to the issuance of the Final Order and consents to the payment of a SEP-mitigated civil penalty of Five Thousand One Hundred Dollars ($5,100).

35. 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 Blvd.
Lenexa, Kansas 66219;
and

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

36. 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.

37. 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.

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

39. 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 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. The effect of the settlement described in paragraph 38 above is conditioned upon the accuracy of this certification.

40. 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.

41. 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.

42. 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.

43. 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:**

11/26/2013
Date

Mr. Monroe Branstad

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

12-11-13
Date

Karen Flournoy
Director
Water, Wetlands and Pesticides Division

J. Daniel Breedlove
Senior Counsel

**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: 12-17-13

IN THE MATTER OF Monroe Branstad d/b/a Branstad Farms - Feedlot, Respondent
Docket No. CWA-07-2012-0030

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:

James L. Pray
666 Grand Avenue
Suite 2000 Ruan Center
Des Moines, Iowa 50309

Dated: 12/18/13

Kathy Robinson

Kathy Robinson
Hearing Clerk, Region 7