

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

1595 WYNKOOP STREET DENVER, CO 80202-1129 Phone 800-227-8917 http://www.epa.gov/region08

2012 JUL 12 PM 2: 31

HM REGION VEL FINARING EL FRIK

DOCKET NO.: CWA-08-2012-0017

IN THE MATTER OF:	)	
DAIRY FARMERS OF AMERICA, INC.	3	FINAL ORDER
10220 North Ambassador Drive	)	
Kansas City, MO 64153	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

The Complainant's Request to file a PDF signature is herby granted.

SO ORDERED THIS 12th DAY OF July , 2012

Elyana R. Sutin

Regional Judicial Officer

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCYJUL 12 PM 2: 08 REGION 8

In the Matter of:	DOCKET NO.:	CWA-08-2012-0017	BYA REGION VIEW FALL RING IN FRIK
The state of the s	s of America, Inc. mbassador Drive IO 64153,	EXPEDITED CONSENT	Γ AGREEMENT
Respond	dent.	)	

- 1. Pursuant to 40 C.F.R. § 22.13(b), Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Dairy Farmers of America, Inc., by their undersigned representatives, hereby settle the civil cause of action arising out of Complainant's assertion of Respondent's violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations at Respondent's facility located in Smithfield, Utah, and agree as follows:
- 2. The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 C.F.R. Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.
- Respondent owns and/or operates the Dairy Farmers of America, Inc. facility (Facility)
  located at 6350 North 2150 West, Smithfield, Cache County, Utah, in the Southeast ¼ of
  the Southwest ¼ of Section 19, Township 13 North, Range 1 East, of the 6<sup>th</sup> Prime
  Meridian.
- The Facility is adjacent to the West Cache Canal, and is located 930 feet from the Bear
   River, which is an interstate water that discharges to the Great Salt Lake, a traditional

- navigable water. Discharges of harmful quantities of oil from the Facility could reasonably be expected to reach navigable waters of the United States or adjoining shorelines.
- The facility has a total aboveground storage capacity of approximately 23,050 gallons of oil and is subject to the SPCC regulations.
- Respondent admits the Facility is subject to the SPCC regulations.
- In an April 13, 2011 response to a Clean Water Act Section 308 Request for Information from EPA, Holly Cunningham, General Manager of Sapp Brothers Travel Centers, Inc., stated that the Facility did not have an SPCC plan in place.
- On February 14, 2012, Respondent submitted documentation to EPA showing compliance with the SPCC regulations at the Facility.
- For the purposes of this Expedited Settlement Agreement, Respondent does not contest that
  on April 13, 2011, it did not have an adequate written SPCC Plan for the Facility in
  accordance with 40 C.F.R. § 112.3.
- Respondent admits that EPA has jurisdiction in this proceeding.
- Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this Agreement.
- 12. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
- This Agreement contains all terms of the settlement agreed to by the parties.
- Respondent consents and agrees to the assessment of a civil penalty of \$1,500.00 for violations of Section 311(j) of the Act, which shall be paid no later than thirty (30) days

after the effective date of the Final Order by means of a cashier's or certified check, or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF – 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U. S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000

If the Respondent sends payment by overnight mail, the payment shall be sent to:

U.S. Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, MO 63101 Contact: Natalie Pearson 314-418-4087

Wire transfers shall be directed to:

Federal Reserve Bank of New York ABA: 021030004 Account: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

15. The Respondent shall submit copies of the check (or, in the case of a wire transfer, copies of the confirmation) to the following persons:

Tina Artemis, Regional Hearing Clerk (8RC) U.S. EPA Region 8 1595 Wynkoop Denver, CO 80202-1129

#### and

# Cynthia Peterson Technical Enforcement Program (8ENF-UFO) U.S. EPA Region 8 1595 Wynkoop Denver, CO 80202-1129

- Respondent will implement and maintain an SPCC plan at the Facility in accordance with 40 C.F.R. § 112.
- 17. Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this Agreement once incorporated into the Final Order, this Agreement is null and void, and EPA may pursue any applicable enforcement options.
- 18. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind Respondent to the terms and conditions of this Agreement.
- The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
- Each party shall bear its own costs and attorneys fees in connection with this matter.
- 21. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this Agreement.

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#### CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached EXPEDITED CONSENT AGREEMENT and FINAL ORDER in the matter of DAIRY FARMERS OF AMERICA, INC.; DOCKET NO.: CWA-08-2012-0017 was filed with the Regional Hearing Clerk on July 12, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Brenda L. Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt and e-mailed on July 12, 2012 to:

Dairy Farmers of America, Inc. 10220 North Ambassador Drive Kansas City, MO 64153 Amy.Wachs@huschblackwell.com

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

July 12, 2012

Tina Artemis

Paralegal/Regional Hearing Clerk