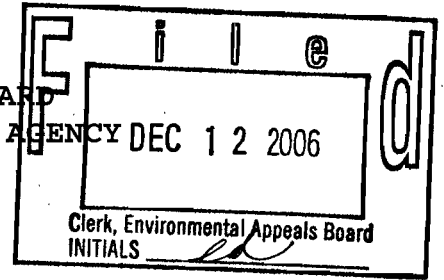


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:) Consent Agreement and
) Final Order
Consent Agreements and Proposed) CAA-HQ-2005-xx
Final Orders for Animal Feeding) CERCLA-HQ-2005-xx
Operations) EPCRA-HQ-2005-xx
_____)

FINAL ORDER

I. BACKGROUND

On December 6, 2006, the Environmental Appeals Board ("Board") received for review and ratification fifty-two Consent Agreements and Proposed Final Orders ("Agreements")¹ from the EPA's Office of Enforcement and Compliance Assurance ("OECA", also referred to as "Complainant") in accordance with 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. pt. 22

¹ The Office of Enforcement and Compliance Assurance provided a list of the fifty-two companies (or "Respondents") that entered into these Agreements. See Attachment A to Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (December 6, 2006). This attachment has been incorporated into this Order as Attachment 1. This Order applies to all the Respondents listed in the Attachment.

The same submittal also requested that the Board approve changes made to one hundred and eighty-six Agreements previously approved, including vacating nine of those Agreements. *Id.* The Board will rule on these Agreements in a separate order.

("Part 22").² These Agreements are part of a large group of proposed agreements EPA has received in response to a nationwide offer EPA made to animal feeding operations ("AFOs") in the egg, broiler, chicken, turkey, dairy, and swine industries that meet the definition of an AFO under the Clean Water Act. See Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 4958, 4959 (Jan. 31, 2005).

EPA offered AFOs the opportunity to sign consent agreements to resolve potential liabilities under the Clean Air Act ("CAA"), CAA §§ 101-618, 42 U.S.C §§ 7401-7671q, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), CERCLA §§ 101-405, 42 U.S.C. §§ 9601-967, and the Emergency Planning and Community Right-To-Know Act ("EPCRA"), EPCRA §§ 301-330, 42 U.S.C. §§ 1101-11050. See Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 4958 (Jan. 31, 2005); see also Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 40016 (July 12, 2005).

² According to section 22.18(b)(3), settlements or consent agreements arising from proceedings commenced at EPA Headquarters need the Board's approval before becoming final Agency action. 40 C.F.R. § 22.18(b)(3) ("No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from * * *, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement."). See also *id.* § 22.4(a) ("The Environmental Appeals Board * * * approves settlements of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters").

Under the model agreement published in the January 31, 2005 Federal Register notice, participating AFOs will pay a civil penalty based on the number and size of the farms and the number of animals at each AFO covered by the Agreement, in accordance with a table set forth therein. Participating AFOs would also share responsibility for funding a two-year nationwide emissions monitoring study aimed at the development of methodologies for estimating emissions from AFOs, which in turn would be used to determine participating companies' regulatory status and compliance under the CAA, CERCLA, and EPCRA. As part of the Agreements, the companies would receive a release and covenant not to sue for potential civil violations of specified requirements of these statutes that may have already occurred or that may occur during the study period.

This is the seventh group of Agreements the Board has received for review and ratification under this initiative. The first group consisted of twenty Agreements, which, after careful examination,³ the Board ratified by Final Order dated January 27,

³ On November 18, 2005, after a preliminary examination of the first group of Agreements and the supporting documentation OECA submitted, the Board issued an order identifying various areas that needed clarification and requesting OECA to file a supplemental memorandum answering several questions. The Board also scheduled a hearing inviting OECA and any interested Respondents to address the areas identified in the order. See Order Scheduling Hearing and Requesting Supplemental Information (continued...)

2006. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, Jan. 27, 2006). In its review of the first twenty Agreements, the Board found that: (1) the Agreements were administrative penalty orders subject to Board review; (2) the Agreements did not violate the Clean Air Act or Part 22; and (3) the penalty amounts set forth in the Agreements followed the applicable statutory penalty criteria and any deviations from EPA's penalty policies were appropriately explained. *Id.* 8-34. After the first group of twenty Agreements, the Board has received six additional groups of varying numbers of Agreements for Board ratification. On April 17, 2006, the Board ratified the second group of Agreements, consisting of seven hundred and two Agreements. See Consent

³(...continued)
(EAB, Nov. 18, 2005). On December 6, 2005, the Board received a joint request from various community and environmental groups (collectively referred to as "AIR"), seeking, among other things, to file a memorandum to respond to OECA's supplemental brief and asking to participate at the hearing. By order dated December 8, 2005, the Board granted AIR the opportunity to participate at the hearing. See Order Granting Opportunity to Participate at Hearing and Allocating Time (EAB, Dec. 8, 2005). By a separate order, the Board allowed AIR to file a non-party brief. See Order Denying Motion for Leave to Intervene (EAB, Dec. 8, 2005).

The Board held the hearing on December 13, 2005. OECA, counsel for six of the Respondents, and AIR participated at the hearing. On December 20, 2005, AIR filed a non-party brief responding to OECA's supplemental brief. On January 6, 2006, OECA and Respondents each filed a response brief to AIR's non-party brief. Upon consideration of all responsive filings, the Board issued a Final Order on January 27, 2006, ratifying the Agreements.

Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, Apr. 17, 2006). The third group, consisting of two hundred eighty-six Agreements, was ratified on May 5, 2006. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, May 5, 2006). The fourth group, consisting of one thousand two hundred and five Agreements, was ratified by the Board on July 19, 2006. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, July 19, 2006). The fifth group, consisting of three hundred and fifty-three Agreements, was ratified on August 7, 2006. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, Aug. 7, 2006). On August 16, 2006, the Board received the sixth group, which consisted of two Agreements. The Board ratified these two Agreements in separate orders; one order was issued on August 17, 2006, see Consent Agreement and Proposed Final Order for Animal Feeding Operations - Foster Brothers Farm, Inc. (EAB, Aug. 17, 2006), the other one was issued on August 21, 2006, see Consent Agreement and Proposed Final Order for Animal Feeding Operations - Seaboard Farms LP (EAB, Aug. 21, 2006). Currently, the Board has ratified a total of two thousand five hundred and sixty-eight final Agreements. The discussion and findings in these earlier orders apply with equal force to these Agreements as well.

In its transmittal memorandum, OECA represents that the Agreements in this current group are identical to the agreements previously ratified by the Board, the model agreement published in the January 31, 2005 Federal Register notice, and the sample Agreement attached to its transmittal memorandum.⁴ The transmittal memorandum further states that each penalty assessed by the Agreements is in accordance with the formula established in Paragraph 48 of the model agreement.⁵

Upon review, the Board hereby issues the following order.

II. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b), the Board issues this Final Order ratifying the Agreement executed by the Complainant and each Respondent listed in Attachment 1 to this Order as submitted to the Board by Complainant on December 6, 2006. Complainant and Respondent have consented to the entry of this

⁴ Memorandum on Consent Agreements and Proposed Final Orders for Animal Feeding Operations from Granta Y. Nakayama to Environmental Appeals Board (December 6, 2006) at 4.

⁵ *Id.* The Board has previously found that this paragraph is consistent with all applicable statutory penalty criteria and that any deviations from applicable penalty policies are appropriate. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, Jan. 27, 2006) at 25-34.

Final Order and have agreed to comply with the Agreement. It is hereby ORDERED that:

1. Respondent shall comply with all the terms of the Agreement, incorporated herein by reference;

2. Nothing in the Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the CAA, CERCLA, and EPCRA;

3. Respondent is hereby assessed a civil penalty in the sum of the amount determined by Paragraph 48 of the Agreement;

4. Respondent shall, within thirty (30) days of the date an executed copy of the Agreement is received by the Respondent, forward a certified check or money order, payable to the United States Treasurer, in the amount determined by Paragraph 48 of the Agreement to:

U.S. Environmental Protection Agency
(Washington, D.C. Hearing Clerk)
Docket No. [insert Respondent's case docket number]
P.O. Box 360277
Pittsburgh, PA 15251-6277

The check or money order shall bear the notation of the name of the Respondent and the appropriate case docket number. A

transmittal letter, indicating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall file a copy of the check and the transmittal letter by mailing the copies to:

U.S. Mail Address

Office of Hearing Clerk
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
MC 1900L
Washington, D.C. 20460-0001

Courier/FedEx Address

U.S. EPA Office of the Hearing Clerk
1099 14th Street, N.W.
Suite 350, Franklin Court
Washington, D.C. 20005

5. Failure to remit the civil penalty assessed under the Agreement may subject the Respondent to civil action pursuant to section 113 of the CAA, 42 U.S.C. § 7413, section 109 of CERCLA, 42 U.S.C. § 9609, and/or section 325 of EPCRA, 42 U.S.C. § 11045, to collect any unpaid portion of the monies owed, together with the interest, handling charges, enforcement expenses, including attorney fees and nonpayment penalties set forth in Paragraphs 51 and 52 of the Agreement;

6. With respect to all requirements of the Agreement except for those related to the assessment and payment of penalties in Paragraphs 48-52, failure to comply with these other requirements


will void the releases and covenants not to sue granted by the Agreement as provided for in Paragraph 37 of the Agreement;

7. Complainant is ordered to serve each of the Respondents listed in Attachment 1. Complainant shall submit to the Board a certificate of service confirming that such service has been made.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 12/12/06

By: 
Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Final Order in the matter of Consent Agreements and Proposed Final Orders for Animal Feeding Operations, were sent to the following persons in the manner indicated:


By Interoffice Mail
(and copy by facsimile):

Robert A. Kaplan
Bruce Fergusson
Tim Sullivan
Special Litigation & Projects
Division
Office of Civil Enforcement (2248-A)
U.S. Environmental Protection
Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

FAX: (202) 564-0010

Dated:

DEC 12 2006


Annette Duncan
Secretary

Business Confidentiality Asserted¹

Penalty Calculation Table for 52 Respondents

Docket Number	Respondent Name	Address	City, State, Zip	State	Number of Farms			Penalty (in \$)
					Below CAFO Threshold	Above Large CAFO Threshold but less than 10x Large CAFO Threshold	Above 10x Large CAFO Threshold	
2699	KD Farms	28400 410th St.	Rolfe, IA 50581	IA				200
2701	Bremco Farms	07914 Co Road. 66A	New Bremen, OH 45869	OH				200
2702	DRSG Partnership	15959 130th Street	Cresco, IA 52136	IA				500
2703	Paris Foods, Inc.	15002 140th Street	Cresco, IA 52136	IA				3000
2704	Meirick Enterprises, LLC	3324 100th St.	Protivin, IA 52163	IA				500
2705	Quivera Pork	312 North B Street	Washington, KS 66968	KS				200
2706	Rolling Hills Pork	312 North B Street	Washington, KS 66968	KS				500
2707	Kansas Select Pork	312 North B Street	Washington, KS 66968	KS				1000
2710	Pork Producers Ltd. #2	PO Box 308	Waynetown, IN 47990	IN				500
2711	Illini Hi-Tech, Inc.	11469 Baseline Road	Kingston, IL 60145	IL				500
2712	Flecha Dairy	PO Box 460	Dexter, NM 88230	NM				500
2715	Rindler Farm	1480 Wourms Rd.	Ft. Recovery, OH 45846	OH				500
2716	S & J Farm Corp.	8617 E SR 26	Portland, IN 47371	IN				500
2717	Murcrest Farms, LLC	31721 NYS Rt 12	Copenhagen, NY 13626	NY				200
2718	Edeal Dairy	147 A Edeal Road	Los Lunas, NM 87031	NM				1000
2720	Patterson Farms, Inc.	1131 Aurelius/Springport Townline Road	Auburn, NY 13021	NY				1500
2725	Stokes McKoy Farm	4175 Honeycutt Road	Salemburg, NC 28385	NC				500
2728	Heritage Dairy	650 CR F	Clovis, NM 88101	NM				500
2729	Starner Farms Inc.	PO Box 85	Hoffman, MN 56339	MN				2000
2730	Diller Pullet Farm	872 Union City Rd	Ft. Recovery, OH 45846	OH				200
2731	IA Quality Pullets, LLP	4275 225th Avenue	Sioux Rapids, IA 50585	IA				500
2734	Ed Schlatter	12847 SR 637	Paulding, OH 45879	OH				200
2736	M-M Swine LLC	2302 River Road	Algona, IA 50511	IA				500
2737	Daybreak Foods, Inc.	P.O. Box 800	Lake Mills, WI 53551	WI				3500
2738	Tim Friedman Farm	5453 E Vine Street	Dubois, IN 47527	IN				500

Sanitized

¹Information contained in the Number of Farms columns has been claimed CBI by the Respondents and has been removed.

Business Confidentiality Asserted¹

Penalty Calculation Table for 52 Respondents

Docket Number	Respondent Name	Address	City, State, Zip	State	Number of Farms			Penalty (in \$)
					Below CAFO Threshold	Above Large CAFO Threshold but less than 10x Large CAFO Threshold	Above 10x Large CAFO Threshold	
2739	Dawes Inc.	4075 North, 200 West	Urbana, IN 46990	IN				500
2744	Linn Grove Pullets Inc	876 440th Street	Linn Grove, IA 51033	IA				500
2747	Ernest Byrd Hog Farm	5135 Live Oak Hog Company Road	Pink Hill, NC 28572	NC				200
2748	Sperry Farms, Inc.	11420 Sperry Road	Atlantic, PA 16111	PA				1000
2749	DeGroot Dairy (Barnes II Dairy)	5520 W Delaware Avenue	Visalia, CA 93291	CA				500
2745	Stephenson Hog Farm	3794 Hwy. 90	Vienna, GA 31092	GA				200
2746	Maple Brook Farms, LLC	19646 SR 292	Ridgeway, OH 43345	OH				200
2750	Kreg Kantak	1352 250th Street	Webster City, IA 50595	IA				1500
2751	Daybreak Dairy	PO Box 170	Mesquite, NM 88048	NM				500
2752	John Fortkamp	14574 State Rt.49	Ft. Recovery, OH 45846	OH				500
2753	Appell Dairy	2602 Knox Road 1900 E	Altona, IL 61414	IL				500

Penalty Calculation Table for 52 Respondents¹

Docket Number	Respondent Name	Address	City, State, Zip	State	Number of Farms			Penalty (in \$)
					Below CAFO Threshold	Above Large CAFO Threshold but less than 10x Large CAFO Threshold	Above 10x Large CAFO Threshold	
2698	Brett Piper	13859 Roberts Road	Sunbury, OH 43074	OH	1		1	200
2708	Girard Bros LLC	13359 P Road	Osceola, NE 68651	NE	1	1	2	1000
2713	Dan and Peggy Comstock	21779 Hwy MM	Versailles, MO 65084	MO	1		1	200
2714	Langley Farms Inc.	943 Gurley's Mill Road	Princeton, NC 27569	NC		1	1	500
2719	LWN Properties, L.P.	P.O. Box 1285	Manhattan, KS 66505	KS	1	1	2	1000
2721	Welch Farm	10088 New Hope Rd.	Galt, CA 95632	CA	2		2	1000
2722	Rover's Farm Inc.	396 North Farm Rd.	Chazy, NY 12921	NY		1	1	500
2723	Lloyd Brubaker	561 Brown Rd	Meyerstown, PA 17067	PA		1	1	500
2724	Adam Robson Farm	11554 Pucker Street	Niles, MI 49120	MI	2		2	1000
2726	Van Eaton Pork	3369 Delta Avenue	Prescott, IA 50859	IA		1	1	500
2727	Sunrise Farms-Ken Beers	1236 Newport Rd	Duncannon, PA 17020	PA		1	1	500
2732	Gary Askew	2125 Arba Jason Road	Lagrange, NC 28551	NC		1	1	500
2733	Wuebker Farm	2129 Wuebker Road	Maria Stein, OH 45860	OH		1	1	500
2735	Ed Raszkowski	7499 E. 1000N.	Union City, IN 47390	IN	1		1	200
2740	The Pullet Connection, Inc.	28595 703th Avenue	Danube, MN 56230	MN		1	1	500
2743	Jerry Post Pullets	2758 Fox Road	Fort Recovery, OH 45846	OH		1	1	500