

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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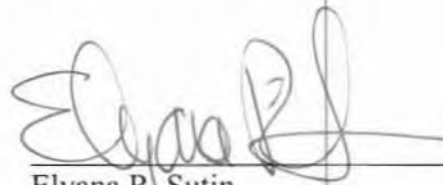
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: SDWA-08-2011-0034

IN THE MATTER OF:)
)
FARMERS NEW HOLLAND, INC.) FINAL ORDER
)
RESPONDENT)

Pursuant to 40 C.F.R. §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.

SO ORDERED THIS 21st DAY OF July, 2011.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF)
)
Farmers New Holland, Inc.,)
)
Respondent.)
_____)

Docket No. SDWA-08-2011-0034
CONSENT AGREEMENT
FILED
EPA REGION VIII
HEARING CLERK

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent Farmers New Holland, Inc. (Respondent) hereby consent and agree as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On March 28, 2011, Complainant issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging certain violations of section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. § 300h-2(c). Specifically, the Complaint cites Respondent for failing to collect waste fluid samples on a semi-annual basis, as required in part II, E of the permit for its well (CO 50978-06142) from July of 2007 to January 2011. The Complaint proposes a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives their right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.
4. This Consent Agreement contains all terms of the settlement agreed to by the Complainant and the Respondent (hereafter referred to collectively as "the parties"). Upon incorporation into a final order, this Consent Agreement applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or 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 Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged in the Complaint.

5. Pursuant to section 1423(c)(4)(B) of the Act, 42 U.S.C. § 300h-2(c)(4)(B), taking into account the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Ten Thousand Dollars (\$10,000).

TERMS OF SETTLEMENT

6. Respondent consents to the issuance of the Consent Agreement and consents, for the purposes of settlement and without admitting any of the allegations in the Order not heretofore admitted, to the payment of the civil penalty cited in paragraph 5 above. Respondent shall pay the civil penalty cited in paragraph 5 above by making a total of eight (8) payments as set forth in this Consent Agreement. Respondent shall make an initial payment in the amount of One Thousand Two Hundred And Fifty Dollars (\$1250.00) in the manner described below:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case for this amount, payable to "**Environmental Protection Agency**," to:

US checks by regular

US postal service mail:

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

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"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day of the first payment, 30 days of interest accrues; interest will accrue back to the final order date to the date of receipt for any subsequent late installment payments).

- d. In addition to the accrual of interest specified in paragraph 6(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if any penalty payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a Federal or other tax deduction or credit.

7. Respondent shall make seven additional payments, each in the amount of \$1250.00, according to the following schedule and in the same manner as referenced in

Paragraph 6 above:

- a. No later than November 1, 2011;
- b. No later than February 1, 2012;
- c. No later than May 1, 2012;
- d. No later than August 1, 2012;
- e. No later than November 1, 2012;
- f. No later than February 1, 2013;
- g. No later than May 1, 2013;

8. Respondent may pay the full penalty amount any time prior to May 1, 2013, without incurring a pre-payment penalty.

GENERAL PROVISIONS

9. This Consent Agreement shall not relieve Respondent of its obligation to comply with the Act and its implementing regulations.

10. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action

instituted as a result of Respondent's failure to perform pursuant to the terms of the Consent Agreement.

11. The undersigned representative for Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the presiding officer with a request that it be incorporated into a final order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.


14. Failure by Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

15. The Consent Agreement, upon incorporation into a final order by the presiding officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

16. This Consent Agreement shall become effective upon filing with the presiding officer.


FARMERS NEW HOLLAND, INC.,
Respondent.

Date: 7/15/11

By: 
Name, Title: MIKE TRAHERW PRESIDENT

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**
Complainant.

Date: 7/20/11

for By: 
Andrew M. Gaydosh,
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **FARMERS NEW HOLLAND INC.;** **DOCKET NO.: SDWA-08-2011-0009** was filed with the Regional Hearing Clerk on July 21, 2011.

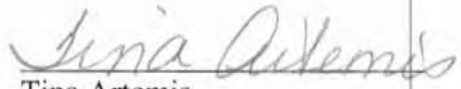
Further, the undersigned certifies that a true and correct copy of the documents were delivered Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 21, 2011, to:

Mike Trahern, President
Farmers New Holland, Inc.
46485 U. S. Hwy. 24
Burlington, CO 80807

E-mailed to:

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

July 21, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

