

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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EPA--REGION 10

In the matter of:)
)
)
Bayside Dairy, LLC,) DOCKET NO. CWA10-2008-0055
)
Mt. Vernon, Washington,)
) CONSENT AGREEMENT AND
) FINAL ORDER
Respondent.)
_____)

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the undersigned Regional Judicial Officer, Region 10.

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent Bayside Dairy, LLC hereby agrees to the issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO

commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent owns and operates a dairy located at 18550 Hickox Rd., Mt. Vernon, Washington ("the Facility").

3.2. Respondent is a limited liability corporation organized under the laws of the State of Washington. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.3. Respondent's Facility contains at least six unvegetated dairy cattle barns in which it currently stables or confines and feeds or maintains cattle for a total of 45 days or more in any 12-month period.

3.4. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over any portion of the pens described in paragraph 3.3.

3.5. The Facility is an "animal feeding operation" as that phrase is defined in 40 C.F.R. § 122.23(b)(1).

3.6. For at least the last five years, Respondent has not been authorized to discharge pollutants under an NPDES permit.

3.7. On February 21, 2007, EPA conducted an NPDES inspection of the Facility.

3.8. At the time of the February 21, 2007 inspection, the Facility confined

approximately 450 milking cows. Upon information and belief, Respondent has confined more than 450 head of cattle at the Facility for 45 days or more in the last 12 months.

3.9. The Facility is a "concentrated animal feeding operation" as that phrase is defined in 40 C.F.R. § 122.23(b)(2), and is a "point source" as used in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.10. Spillage or overflow from animal watering systems, as well as any water that comes into contact with any raw materials, products, or byproducts including manure, litter or feed is "process wastewater" as the term is defined in 40 C.F.R. § 122.23(b)(7).

3.11. The drainage ditch on the west side of the Facility originates outside of and passes over, across, or through the Facility.

3.12. The drainage ditch flows into the Skagit River, which flows into Puget Sound, which is an arm of the Pacific Ocean.

3.13. The ditch, which contains water year round and which is a tributary of the Skagit River, is "navigable waters" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" within the meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2. In the alternative, the ditch conveys pollutants from Respondent's Facility to the Skagit River, which is a water of the United States.

3.14. On February 21, 2007, EPA conducted an inspection of the Facility. At the time of the inspection, the Facility's barns were discharging process wastewater into the ditch. Upon information and belief, pollutants entering the ditch from the Facility flowed into the Skagit River and waters downstream of the Skagit.

3.15. Process wastewater discharged from the Facility is and contains "pollutant[s]"

within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

3.16. The process wastewater discharges described above constitute "discharge[s] of pollutants" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), from a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.17 The discharges of pollutants described above were unauthorized discharges of pollutants to waters of the United States and constitute at least one day of violation of Section 301 of the Act, 33 U.S.C. § 1311(a). Consequently, pursuant to Section 309(g)(2)(B) of the Act, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000 per violation for each day during which the violation continues, up to a maximum penalty allowed under 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

- 4.1. Respondent admits the jurisdictional allegations contained in the Complaint.
- 4.2. Respondent enters this CAFO without admitting or denying liability or the facts alleged by EPA to establish violations of the Act, and further does so to compromise and settle the Complaint without further proceedings in this matter.
- 4.3. Respondent expressly waives the right to contest the allegations contained in the Complaint and to appeal the Final Order contained herein.
- 4.4. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is in the amount of EIGHT THOUSAND DOLLARS (\$8,000). This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33 U.S.C.

§ 1319(g)(3).

4.5. Respondent consents to the issuance of the Final Order recited herein, to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.6. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.7. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop OCE-133
Seattle, Washington 98101-3140
Attn: Chae Park.

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.5, above, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent

may be subject to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.5, above, Respondent shall be responsible for payment of the amounts described below:

4.9.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, below, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.10. The penalty described in Paragraph 4.4, above, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA

and shall not be deductible for purposes of federal taxes.

4.11. The undersigned certifies that he is fully authorized to enter into the terms and conditions of this CAFO and he is bound by this document.

4.12. Except as described in Subparagraph 4.9.2, above, each party shall bear its own costs in bringing or defending this action.

4.13. The provisions of this CAFO shall bind Respondent and his agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

STIPULATED AND AGREED:

BAYSIDE DAIRY, L.L.C.



Jeff Boon

Dated: 2-17-08

U.S. ENVIRONMENTAL PROTECTION AGENCY



MARK A. RYAN
Assistant Regional Counsel

Dated: 2/21/08

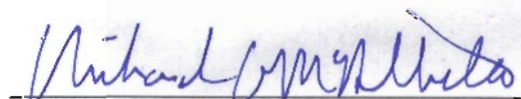
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 4th day of April, 2008.



Richard G. McAllister
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Bayside Dairy, LLC, DOCKET NO.: CWA-10-2008-0055**, was filed with the Regional Hearing Clerk on April 4, 2008.

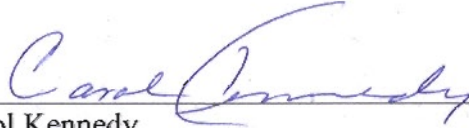
On April 8, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan
US Environmental Protection Agency
1435 North Orchard Street
Boise, ID 83706

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on April 4, 2008, to:

Jeff Boon
Bayside Dairy, LLC
18220 Hickox Road
Mt. Vernon, WA 98273

DATED this 4th day of April 2008



Carol Kennedy
Regional Hearing Clerk
EPA Region 10