



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 12 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5937 2760

Lyn Main
Berkshire Valley Dairy LLC
P.O. Box 27
Copake Falls, NY 12517

Re: Notice of Complaint and Proposed Assessment of a Civil Penalty
Berkshire Valley Dairy, LLC
NPDES Tracking No. NYA000595
Docket No. CWA-02-2010-3309

U.S. ENVIRONMENTAL
PROTECTION AGENCY/REGION 2
2010 JAN 15 AM 9:11
REGIONAL HEARINGS
CLERK

Dear Mr. Main:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that Berkshire Valley Dairy, LLC, located at 533 North Mountain Road, Copake Falls, New York 12517, is in violation of Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311 and 1342. This Complaint is filed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of \$12,000 be assessed against Berkshire Valley Dairy, LLC for these violations. Also enclosed is a proposed Consent Agreement and Final Order (CAFO) for this matter, which, should you decide to execute it, will immediately settle this matter for \$8,100.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all
Internet Address (URL) • <http://www.epa.gov>

parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP. Should you desire to informally confer with EPA, an extension of the 30-day response period should be requested from the Regional Hearing Officer, as provided in 40 C.F.R. § 22.16 of the CROP.

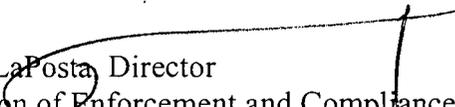
For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. § 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

After due consideration, the Region has determined that it is willing to settle this matter for eight thousand, one hundred dollars (\$8,100), \$3,900 less than the penalty amount proposed in the enclosed complaint. Therefore, also enclosed is a proposed Consent Agreement and Final Order (CAFO), which provides for the settlement of this matter by payment of a \$8,100 penalty. If you would like to settle this matter in accordance with this Consent Agreement without any further action on your part, you may execute the CAFO by signing and returning it to:

Chris Saporita, Esq.
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Should you have any questions concerning this matter, please feel free to contact Chris Saporita, Esq. at (212) 637-3203 or by e-mail at Saporita.Chris@epa.gov, or Ms. Justine Modigliani, NPDES Team Leader at (212) 637-4268.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy
4. Information for Small Business
5. CAFO

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Lyn Main
Berkshire Valley Dairy, LLC
533 North Mountain Road
Copake Falls, New York

RESPONDENT

Proceeding pursuant to Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A
CLASS I CIVIL PENALTY**

DOCKET NO. CWA-02-2010-3309

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with 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 ("CROP"), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby proposes to assess a civil penalty against Berkshire Valley Dairy, LLC ("Respondent"), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, respectively, for failure to comply with the terms of the New York State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFO General Permit").

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG II
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REGIONAL HEARING
OFFICE

II. DEFINITIONS AND STATUTORY PROVISIONS

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides, in relevant part, that "[e]xcept as in compliance with [33 U.S.C. § 1312], the discharge of any pollutant by any person shall be unlawful."
4. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
5. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
6. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
7. The term "navigable waters" means the waters of the United States, pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "waters of the United States" are defined in 40 C.F.R. § 122.2 to include, among other things, intrastate rivers and streams, the use, degradation, or destruction of which would affect or could affect interstate commerce.
8. The term "point source" means "any discernible, confined and discrete conveyance, including but not limited to any . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged . . .", pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
9. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to grant a National Pollutant Discharge Elimination System ("NPDES") permit authorizing the discharge to waters of the United States, under certain conditions. A NPDES permit is required for Concentrated Animal Feeding Operations ("CAFOs") that discharge or propose to discharge pollutants to waters of the United States. 40 C.F.R. § 122.23(d). The Section 402 permit program has been delegated to the State of New York, so that proponents of discharges from CAFOs may comply with the Act by obtaining a State Pollutant Discharge Elimination System ("SPDES") permit from the New York State Department of Environmental Conservation ("NYSDEC"). 33 U.S.C. § 1342(b).
10. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, inter alia, a large CAFO.

12. A “large CAFO” is defined by 40 C.F.R. § 122.23(b)(4)(i) as an animal feeding operation that stables or confines as many or more than “700 mature dairy cows, whether milked or dry.”
13. The term “CAFO General Permit” means the New York SPDES General Permit for Concentrated Animal Feeding Operations, No. GP-04-02. This general permit was effective July 1, 2004 and expired on June 30, 2009 and has been administratively extended until the reissuance of the permit.
14. Persons regulated under 40 C.F.R. § 122.23(d) may comply with the permit requirement of Section 402 of the CWA by obtaining coverage under New York’s CAFO General Permit.
15. Pursuant to 40 C.F.R. § 122.41(a), permittees are required to comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action. Compliance with the CAFO General Permit requires, among other things, the preparation and implementation of a Nutrient Management Plan (“NMP”) that meets the requirements outlined in 40 C.F.R. § 122.42(e)(1). In addition, record keeping requirements are stated in 40 C.F.R. § 122.42(e)(2), and 40 C.F.R. § 412.37 further spells out requirements that all large CAFOs must comply with, including weekly and daily visual inspections and additional record keeping requirements.
16. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that “[w]henever required to carry out the objectives of [the CWA], including but not limited to . . . determining whether any person is in violation of any [applicable] effluent limitation . . . or standard of performance,” EPA “shall require the owner or operator of any point source” to submit any information reasonably necessary to make such a determination.
17. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes EPA to commence an administrative action for violations of “any condition or limitation which implements [among others, sections 301, 308, or 402]” of the CWA, and to “issue an order requiring [compliance with the applicable] section or requirement . . .”, and Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to assess civil penalties for such violations.

III. JURISDICTIONAL FINDINGS

18. Berkshire Valley Dairy, LLC (“Berkshire Valley” or “Respondent”) is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
19. Respondent owns and operates an animal feeding operation (“Facility”) that is located on 533 North Mountain Road in Copake Falls, New York.
20. Respondent applied for coverage under the CAFO General Permit on April 17, 2000. Coverage was granted under that permit on May 2, 2000.

21. The Facility confines and feeds or maintains dairy cows for a total of 45 days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the Facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
22. On April 21, 2009 and May 7, 2009, the Facility was confining approximately 1000 mature dairy cows, and 300 heifers and heifer calves. Therefore, the Facility is a large CAFO, as that term is defined in 40 C.F.R. § 122.23(b)(4).

IV. FINDINGS OF VIOLATION

23. On April 21, 2009, and again on May 7, 2009, an EPA inspector conducted Compliance Evaluation Inspections (“CEIs”) of the Facility (see enclosed CEI Report). Based on the CEIs, EPA has found the following violations of the CAFO General Permit:
 - a. Part VI.A of the CAFO General Permit (Effluent Limitations for CAFOs) prohibits “. . . [the] discharge of process waste water pollutants to the surface waters of the State except in accordance with Section VI.C of this permit.” On May 7, 2009, the EPA inspector observed a discharge of manure from the Facility’s vegetative treatment strip or filter strip, and visual impacts were observed in an unnamed tributary to the Roeliff Jansen Kill.
 - b. Part VII.C.vi of the CAFO General Permit (Comprehensive Nutrient Management Plan (“CNMP”) Completion Schedule) states that all CAFO owners and operators must, after it is developed, maintain a copy of the site-specific certified CNMP onsite, as well as records documenting the implementation of the best management practices and procedures identified in the BMP. As the vegetative treatment strip is a site specific best management practice that is included in the Facility’s CNMP, records documenting the implementation and operation and maintenance of the vegetative treatment strip should have been maintained. However, the records were not available on either April 21 or May 7, 2009. In addition, because manure from the Facility is land applied in accordance with site specific agronomic needs, Respondent is required to maintain records of manure applications. The EPA inspector observed that such records were not adequately maintained prior to April 21, 2009.
 - c. Part VIII.C.xiii of the CAFO General Permit (Generic Best Management Practices – Transfer of Manure, Litter, and Process Wastewater to Other Persons) requires the permittee to maintain records showing the date and amount of manure, litter and/or process wastewater that leaves the permitted operation if greater than 50 tons are sold or given away to any one person annually. The permittee is also required to record the name and address of the recipient and provide the recipient with representative information on the nutrient content of the manure, litter, and/or process wastewater. The records must also be retained on-site for a period of five years. At the time of the April 21, 2009 CEI, the Respondent failed to produce manure export records, despite the fact that Respondent had exported 884 tons of manure during 2008 to one recipient according to the Annual Compliance Report (Appendix D) submitted by the Facility on January 20, 2009 to NYSDEC.

- d. Part IX.B.i of the CAFO General Permit (Discharge Reporting) requires the permittee to notify the NYSDEC Regional office of a discharge if the permittee knows or has reason to believe there is a discharge of process wastewater or spill to waters of the State that causes deposition, substantial visible contrast, or impacts to fish, or other violations of 6 NYCRR Parts 700 through 750. The permittee should notify NYSDEC orally within twenty-four hours and submit a written *CAFO Incident Report* within five days. Despite EPA's finding on May 7, 2009, that there was a discharge and that visible contrast was observed in the unnamed tributary to the Roeliff Jansen Kill, the Facility did not notify NYSDEC of the discharge.
- e. Part IX.F of the CAFO General Permit (Retention of Records) requires the permittee to retain copies of all records and reports required by the permit for a period of at least 5 years from the date reported, and Part IX.K of the CAFO General Permit (On-site Rain Gauge) requires the permittee to install and maintain a standard rain gauge in the proximity of the confinement area. The permittee is also required to measure and record all precipitation events in excess of 0.3 inches. Respondent has only maintained the required precipitation records since 2008 and has not maintained the records for five years as required.
- f. Part IX.N.i of the CAFO General Permit requires permittees to perform weekly inspections of all storm water diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure. Such weekly inspections were not performed or recorded until March, 2009.
- g. Part IX.O of the CAFO General Permit (Land Application Areas) subsections i and ii, require permittees to maintain records of weather conditions at the time of manure application and for 24 hours prior to and following manure application, as well as dates that manure application equipment is inspected. Such records were not maintained until March, 2009.
- h. Part IX.N.i of the CAFO General Permit requires that permittees perform daily inspections of all water lines, including drinking and cooling water lines. Part IX.O.i of the CAFO General Permit requires that permittees document daily inspections of water lines, including drinking water lines and or cooling water lines. As of April 21, 2009, the Respondent had not maintained these required records.
- i. Part X.G of the CAFO General Permit (Proper Operations and Maintenance Requirements) requires permittees to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. On April 21 and May 7, 2009, the Respondent was not properly operating and maintaining his vegetative treatment strip in accordance with the terms of the permit and his operations and maintenance plan, as demonstrated by the discharge described in paragraph 23.a, above.

24. On June 29, 2009, pursuant to Sections 308 and 309 of the CWA, EPA issued an Administrative Order (“AO”) (CWA-02-2009-3071) to Respondent. The AO required Respondent to remedy certain violations found by EPA during the April 21 and May 7, 2009 inspections, and to file an Answer within thirty (30) calendar days of receipt. The AO was received by Respondent on July 6, 2009. Thus, Respondent’s Answer was due no later than August 5, 2009. Respondent’s attorney contacted EPA on July 23, 2009 to request an extension to August 14, 2009 to file an Answer, because Respondent was out of the country and would not be returning until the end of July 2009. EPA granted the extension on July 23, 2009. EPA received Respondent’s Answer on August 13, 2009.
25. Based on the Findings above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to comply with the terms of the CAFO General Permit.

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$12,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, Respondent’s prior compliance history and degree of culpability, any economic benefit or savings accruing to Respondent as a result of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth above, Respondent is liable for **nine (9) distinct violations of the Act, some of which have continued for as long as 5 years**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a hearing on this Notice pursuant to the following section.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute, or that might constitute, the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). However, even if Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e. in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion by the Complainant. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

VII. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Chris Saporita, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3203

The parties may engage in settlement discussions regardless of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). And, in order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3). In accepting a Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (\$12,000) within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted below), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VII, above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2010-3309

Wire transfers should be directed to the Federal Reserve Bank of New York, as follows:

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"

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to Federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

IX. FILING OF DOCUMENTS

The Answer and any hearing request and all subsequent documents filed in this action shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

A copy of the Answer, any hearing request and all subsequent documents filed in this action shall be sent to:

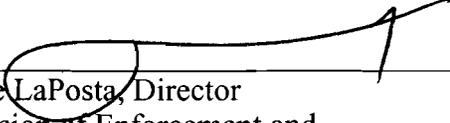
Chris Saporita, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3203
Fax: (212) 637-3199

X. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 12th DAY OF JANUARY, 2010.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Lyn Main
Berkshire Valley Dairy, LLC
533 North Mountain Road
Copake Falls, New York

RESPONDENT

Proceeding pursuant to Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A
CLASS I CIVIL PENALTY**

DOCKET NO. CWA-02-2010-3309

JAN 13 2010

I certify that on _____, I served the foregoing fully executed **Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing**, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail

Return Receipt Requested:

Berkshire Valley Dairy, LLC
P.O. Box 27
Copake Falls, NY 12517

Copy by Certified Mail

Return Receipt Requested:

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3506

Dated: 1/13/10


Secretary
New York, New York