

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

10 DEC 17 PM 1:38

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

Kevin Vaughan
and
Bryce Andersen

Respondents

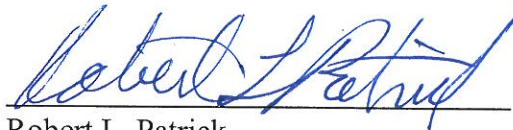
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Docket No. CWA-07-2010-0105

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 6 (in duplicate) of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: Dec. 17, 2010



Robert L. Patrick
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

10 DEC 17 PM 1:32
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
) Docket No. CWA-07- 2010-0105
KEVIN VAUGHAN)
)
and)
)
BRYCE ANDERSEN,)
)
Respondents) CONSENT AGREEMENT AND
) FINAL ORDER
)
Proceedings under Section 309(a)(3) of the)
Clean Water Act, 33 U.S.C. § 1319(a)(3))
_____)

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about June 25, 2010, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (Complainant or EPA) issued to Kevin Vaughan and Bryce Andersen (Respondents), a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondents with a violation of Sections 301 and 404 of the CWA, 33 U.S.C. § 1311 and § 1344, and the regulations promulgated thereunder.

The Complaint proposed a civil penalty of up to the statutory maximum of \$177,500 for this violation. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CA/FO) are the result of such negotiations.

CONSENT AGREEMENT

1. Respondents admit the jurisdictional allegations of this CA/FO and agree not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
2. As this is a settlement, neither party admits nor denies any fact or liability with respect to the allegations contained in the Complaint referenced above. Also, Respondent Bryce Andersen does not admit to having knowledge of the violations alleged by EPA in the Complaint referenced above.
3. Respondents consent to the issuance of the Final Order.
4. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.
5. Respondents waive any right to contest the allegations and right to appeal the proposed Final Order accompanying this CA/FO.
6. Respondents and Complainant each agree to bear their own costs and attorney's fees.
7. Nothing contained in the Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to defend against such actions on any basis in law or fact.
9. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this CA/FO shall be claimed by the Respondent as a deduction for federal, state, or local income tax purposes.
10. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.
11. Respondents agree that a failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

12. The undersigned certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(a) and (g) of the CWA, 33 U.S.C. § 1319(a) and (g), it is ORDERED that:

1. Respondents consent to the payment of a civil penalty of \$65,000 plus interest of \$742.66 over three years, for a total payment of \$65,742.66. The total civil penalty of \$65,742.66 shall be paid in three installments. The first payment of \$21,914.22 is due within thirty (30) days of the effective date of this CA/FO. The second payment of \$21,914.22 is due no later than December 1, 2011. The third payment of \$21,914.22 is due no later than December 1, 2012.

2. Payments of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must be remitted to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Chris Muehlberger
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Parties Bound

3. This CA/FO shall apply to and be binding upon the Respondents, its agents, successors, and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

4. This CA/FO shall become effective upon receipt by Respondents of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this CA/FO.

In the Matter of Kevin Vaughan and Bryce Andersen

Consent Agreement and Final Order

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COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

12-10-10
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division

12.10.10
Date


Chris Muehlberger
Assistant Regional Counsel

*In the Matter of Kevin Vaughan and Bryce Andersen
Consent Agreement and Final Order*

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RESPONDENTS:

12/8/10
Date


Kevin Vaughan

Date

Bryce Andersen

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RESPONDENTS:

Date

Kevin Vaughan

12-8-10
Date


Bryce Andersen

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IT IS SO ORDERED.

Dec. 17, 2010
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Kevin Vaughan and Bryce Andersen, Respondents
Docket No. CWA-07-2010-0105

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Christopher Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Kevin Vaughan
800 Stevens Port Drive
Suit DD836
Dakota Dunes, South Dakota 57049

Bryce Andersen
Andersen Family Farms
765 200th Street
Dakota Dunes, South Dakota 68731

Michael Cox, Esq.
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103 Street, Suite 800
Omaha, Nebraska 68124

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

The Honorable Barbara A. Gunning
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 12/17/10


Kathy Robinson
Hearing Clerk, Region 7