

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



IN THE MATTER OF: )  
WESTRIDGE DAIRY, LLC ) Docket No. CWA-05-2014-0002  
Respondent ) Proceeding to Assess a Class II Civil Penalty  
under Section 309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g)

**CONSENT AGREEMENT AND FINAL ORDER**

1. Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA"), and Respondent Westridge Dairy, LLC, have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of 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* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g).

3. Respondent consents to the entry of this Consent Agreement and Final Order ("CAFO"), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

4. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

## STATUTORY AND REGULATORY BACKGROUND

5. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, *inter alia*, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.

10. 40 C.F.R. § 122.2 defines "waters of the United States" to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2 define the term “point source” to mean any discernible, confined and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operations, from which pollutants are or may be discharged.

12. Pursuant to 40 C.F.R. § 122.23(b)(1), an “animal feeding operation” is defined as a lot or facility where the following conditions are met:

- (i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

13. Pursuant to 40 C.F.R. § 122.23, a dairy operation is a medium Concentrated Animal Feeding Operation if it meets the following criteria:

- (a) Animals have been, are, or will be stabled, or confined, and fed or maintained for a total of 45 days or more in any 12 month period;
- (b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility and pursuant to 68 Fed. Reg. 7176, 7189 (February 12, 2003) incidental vegetation in an area of confinement does not exclude an operation from meeting the definition of an animal feeding operation;

- (c) Between 200 and 699 mature dairy cows (whether milked or dry cows) are maintained at the site; and
- (d) Pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the United States which originate outside of or pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

14. Pursuant to 40 C.F.R. § 122.23(b)(2), a “concentrated animal feeding operation” includes an animal feeding operation that qualifies as a “medium concentrated animal feeding operation.”

15. Pursuant to 40 C.F.R. §§ 122.21(a) and 122.23(d)(1), the owner or operator of a concentrated animal feeding operation which discharges must seek coverage under an NPDES permit.

16. Pursuant to Section 402(b) of the CWA, 42 U.S.C. § 1342(b), EPA has approved the State of Illinois, through the Illinois Environmental Protection Agency (“IEPA”), to administer the NPDES program, including the issuance of NPDES permits, in Illinois.

17. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA,

33 U.S.C. § 1311, or has violated any permit condition or limitation implementing a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

### **GENERAL ALLEGATIONS**

18. Respondent is an Illinois Limited Liability Company doing business in the State of Illinois.

19. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

20. At all times relevant to this CAFO, Respondent owned and operated a dairy operation located at 2114 Ames Road, Red Bud, Illinois 62278 (the "Site").

21. At all times relevant to this CAFO, Respondent stabled or confined dairy cows.

22. Pursuant to 40 C.F.R. § 122.23(b)(8), "production area" is defined as that part of the animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

23. At all times relevant to this CAFO, the production area at the Site was approximately 5 acres in size and included barns, a milking parlor, a two-stage holding pond, earthen feedlots, a feedlot ditch ("Feedlot Ditch"), a manure storage area ("Feedlot's Feed Alley's Concrete Manure Storage Pad"), an earthen mortality slab ("Mortality Pile"), a concrete line silage area, and other buildings.

24. At all times relevant to this CAFO, the production area was partially uncovered and exposed to rainfall.

25. "Process wastewater" is defined at 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

26. At all times relevant to this CAFO, Respondent's activities in the production area resulted in the generation of wastes including process wastewater, manure, urine, bedding, and feed waste.

27. The Complainant alleges that, at all times relevant to this CAFO, the wastes generated by Respondent in the production area (identified in Paragraph 23 above) contained "pollutants" as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

28. The Complainant alleges that, at all times relevant to this CAFO, rainfall on exposed areas of the Site resulted in surface runoff which contained the pollutants identified in Paragraph 38 below.

29. IEPA personnel conducted inspections at the Site on May 17, 2002, April 15, 2004, and June 21, 2005.

30. EPA personnel conducted an inspection at the Site on April 29, 2009.

31. On the date of the April 29, 2009 inspection by EPA, Respondent was, or had been, stabling, confining, feeding, or maintaining 200-699 dairy cows for a total of 45 days or more in a 12-month period at the Site.

32. The Complainant alleges that samples of the waste generated by Respondent taken by EPA during the April 29, 2009 inspection indicated the presence of Biochemical Oxygen Demand, Total Kjeldahl Nitrogen (TKN), Nitrate-Nitrite N, Total Dissolved Solids, Total Suspended Solids, Ammonia, Total Phosphorus, and Fecal Coliform.

33. The Complainant alleges that, at all times relevant to this CAFO, crops, vegetation, forage growth, or post-harvest residues were not sustained in the normal growing season over any portion of the Site.

34. At all times relevant to this CAFO, the Site was an “animal feeding operation” as that term is defined by 40 C.F.R. § 122.23(b)(1).

35. On the date of the April 29, 2009 inspection by EPA, the Site was a “medium concentrated animal feeding operation” as that term is defined by 40 C.F.R. § 122.23(b)(4)(i).

36. At all times relevant to this CAFO, the Site was a “concentrated animal feeding operation” as that term is defined by 40 C.F.R. § 122.23(b)(2).

37. The Complainant alleges that an unnamed stream flows from or through the production area at the Site, and is a tributary to the Prairie Branch of Horse Creek.

38. Complainant alleges that Respondent’s activities at the Site resulted in the generation of wastes including process wastewater, manure, urine, bedding, and feed waste.

39. Complainant alleges that the wastes described in Paragraph 38, and constituents thereof, are pollutants as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

40. Complainant alleges that, at all times relevant to this CAFO, Respondent did not have a permit under Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge of pollutants from the Site.

**Alleged Violations - Discharges without a Permit**

41. Paragraphs 1 through 40 are re-alleged here as if set forth in full.

42. On April 29, 2009, EPA personnel conducted an inspection of the Site (“Inspection”).

43. Complainant alleges that at the time of the Inspection, runoff of the manure- and feed-associated process wastewater (i.e., rainwater that comes into contact with manure and feed) from the Feedlot’s Feed Alley’s Concrete Manure Storage Pad flowed into the main access roadside ditch, then into an unnamed tributary (“UNT”) of the Prairie Branch of Horse Creek (“Prairie Branch”). The UNT is located on the Site, and runs northeast from or through the Site’s production area and then north.

44. Complainant alleges that at the time of the Inspection, runoff of process wastewater from the Feedlot Ditch on the east side of the production area flowed into the UNT.

45. Complainant alleges that at the time of the Inspection, runoff of process wastewater from the Mortality Pile east of the production area flowed through a channel and sinkhole into the UNT.



46. The UNT flows to the Prairie Branch, which flows to Horse Creek. Horse Creek flows to the Kaskaskia River. The Kaskaskia River flows to the Mississippi River.

47. Complainant alleges that the waterways described in Paragraph 46 are “navigable waters” and “waters of the United States” as those terms are defined by 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

48. Complainant alleges that the runoff described in Paragraphs 43, 44, and 45 above contained pollutants as described in Paragraph 38.

49. Complainant alleges that the Site, the ditches referenced in Paragraphs 43 and 44, and the channel and sinkhole referenced in Paragraph 45 are each “point sources” as that term is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

50. Complainant alleges that Respondent discharged pollutants through a manmade ditch or directly into a water of the United States which passes through the facility.

51. Complainant alleges that the addition of pollutants to waters of the United States through point sources as described in Paragraphs 43-46 is a “discharge of pollutants” as that term is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

52. Complainant alleges that, by discharging pollutants without a permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311.

### **TERMS OF SETTLEMENT**

#### **Assessment and Payment of Penalty**

53. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondent agree to settle this matter for \$2,500.

54. For the purposes of this proceeding only, and pursuant to 40 C.F.R. § 22.18(b)

and (c), Respondent: (a) admits that the EPA has jurisdiction to assess a civil penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g); and (b) neither admits nor denies the facts set forth in this CAFO.

55. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

56. Respondent must pay the \$2,500 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after Respondent and Complainant have executed this CAFO and it becomes effective.

57. Respondent must send the check to the following address:

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

58. This civil penalty is not deductible for federal tax purposes.

59. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk  
Planning and Management Division (R-13J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Kevin Chow  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Felicia Chase  
Water Division (WC-15J)  
EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

60. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty. This nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of each such quarter.

61. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

### OTHER MATTERS

62. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

63. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes, if those laws govern the activities of the Respondent.

64. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.

65. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Site.

66. Each party agrees to bear its own costs accrued in the course of this action.

67. Pursuant to 40 C.F.R. § 22.38, the State was notified of this proceeding and the other terms of this settlement.


68. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

69. This CAFO constitutes the entire agreement between the parties.

70. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

71. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original CAFO, and all of which shall constitute one CAFO. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.


**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Westridge Dairy, LLC**  
**Docket No.**

  
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Tinka G. Hyde, Director  
Water Division

U.S. Environmental Protection Agency  
Region 5

10/18/13  
Date

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Westridge Dairy, LLC**  
**Docket No.**

  
Mike Henry  
Westridge Dairy, LLC

8-29-13  
Date

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of: Westridge Dairy, LLC**  
**Docket No. CWA-05-2014-0002**

**FINAL ORDER**

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: \_\_\_\_\_

Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

Dated: \_\_\_\_\_