

FILED

2008 FEB 25 AM 9:55

NOV 15 2007

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In The Matter of:)	
)	
SCOTT K. BRINTON)	Proceeding Under Section
323 RIVERVIEW ROAD)	309(g)(2)(A) of the Clean Water
PEACH BOTTOM, PA 17563)	Act, 33 U.S.C. § 1319(g)(2)(A)
)	
Respondent)	
)	
RIVERVIEW FARMS)	
241 RIVERVIEW ROAD)	
PEACH BOTTOM, PA 17563)	Docket No. CWA-03-2008-0022
)	
Facility)	

CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AND REGULATORY AUTHORITY

This Consent Agreement and Final Order ("Consent Agreement and Final Order") is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Scott K. Brinton, ("Respondent" or "Brinton"), pursuant to Section 309(g)(2)(A) of the Clean Water Act (hereinafter "CWA" or "the Act"), 33 U.S.C. § 1319(g)(2)(A), and 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 ("Consolidated Rules")*, 40 C.F.R. Part 22.

The parties have agreed to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order pursuant to Section 22.13(b) of the Consolidated Rules, and having consented to the entry of this Consent Agreement and Final Order, agree to comply with its terms.

-
1. Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
 2. Section 402 of the CWA, 33 U.S.C. § 1342, provides for the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits which allow the discharge of pollutants under specified conditions.
 3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
 4. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”
 5. “Point Source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation...from which pollutants are or may be discharged.”
 6. “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.
 7. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
 8. “Large CAFO” defined at 40 C.F.R. § 122.23(b)(4)(iv) includes an animal feeding operation that stables or confines as many as or more than 2,500 swine each weighing 55 pounds or more.
 9. “Land application area” is defined by 40 C.F.R. § 122.23(b)(3) to mean land under

the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

10. Waters of the United States” are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.

11. “Process wastewater” is defined in 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities...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.”

12. The Pennsylvania Department of Environmental Protection is the agency within the Commonwealth of Pennsylvania which is authorized to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs to address violations of the CWA.

13. Pursuant to 40 C.F.R. § 122.23(e), the discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land under its control is a discharge from that CAFO subject to the NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14).

II. FINDINGS OF FACT

14. The Respondent owns and operates an animal feeding operation, known as the “Riverview Farms” also referred to herein as the “Facility” located at 241 Riverview Road, Peach Bottom, Pennsylvania 17563.

15. Respondent stables or confines, in an enclosed barn, in excess of 2,500 swine, each weighing 55 pounds or more, on the Facility for a total of at least 45 days or more in any 12 month period.

16. Riverview Farms is located in close proximity to the Susquehanna River and one of its tributaries, the Haines Branch.

17. Respondent’s Nutrient Management Plan (“NMP”) for the Facility provides for the application of manure to certain of Respondent’s farm fields.

18. According to the NMP, 3,333 gallons per acre of swine manure effluent may be applied to Respondent's fields identified as H7 and H20 (hereafter "Fields H7 and H20), in which barley was to be grown.

19. Records maintained by Mr. Brinton document that he applied 6,000 gallons of swine manure/effluent per acre to Fields H7 and H20 on February 24, 2006. Mr. Brinton utilized manure spreading vehicles equipment to land apply swine manure/effluent.

20. The quantity of swine manure/effluent applied to Fields H7 and H20 exceeded the appropriate agronomic application rate for the fields.

21. The sub-watershed in which Field H7 is located drains into an unnamed perennial tributary of the Susquehanna River (hereafter "Unnamed Tributary of the Susquehanna") in close proximity to, and east of the western edge of Field H7. The sub-watershed in which Field H20 is located drains into the Haines Branch, a perennial tributary of the Susquehanna River, in close proximity to, and south of, the northern edge of Field H20.

22. On numerous days between April 23, 2006 and December 26, 2006, precipitation occurred at Riverview Farms.

23. On December 12, 2006, EPA and its representatives conducted an inspection of Riverview Farms.

24. At the time of the EPA inspection, Respondent did not have an NPDES Permit. Respondent has subsequently applied for an NPDES permit for Riverview farms.

25. On August 27, 2007, EPA met with the Respondent to discuss the facts of this case.

III. CONCLUSIONS OF LAW

26. Scott K. Brinton, is an individual and therefore is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

27. The Facility stables or confines in an enclosed barn, swine, each weighing 55 pounds or more, for a total of 45 days or more in any twelve-month period.

28. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and concentrated animal feeding operation as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

29. Respondent owns and operates an AFO.

30. Respondent's Facility confines at least 2,500 swine 55 pounds or more each, therefore the Facility is a Large CAFO, as that term is defined in 40 C.F.R. § 122.23(b)(4).

31. Respondent did not, at the time of the inspection and the date of the issuance of this Order, have an NPDES Permit for the Facility.

32. The Unnamed Tributary of the Susquehanna and the Haines Branch are waters of the United States, as defined by 40 C.F.R. § 122.2.

33. On information and belief, based on the level of swine manure/effluent applied to Field H7, the distance between Field H7 and the Unnamed Tributary of the Susquehanna, and the slope and condition of the land across that distance, pollutants from the Field H7 did discharge into the Unnamed Tributary of the Susquehanna as a result of the over-application of manure combined with certain precipitation events.

34. On information and belief, based on the level of swine manure/effluent applied to Field H20, the distance between Field H20 and the Haines Branch, and the slope and condition of the land across that distance, pollutants from the Field H20 did discharge into the Haines Branch as a result of the over-application of manure combined with certain precipitation events.

35. Process wastewater and/or manure containing pollutants land applied to Fields H7 and H20 flowed from the fields and ultimately discharged into the Unnamed Tributary of the Susquehanna and the Haines Branch without an NPDES permit. These flows constituted unauthorized discharges of pollutants from a point source to waters of the United States violating Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

IV. GENERAL PROVISIONS

36. For the purpose of the proceeding:

- a. Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order;
- b. Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and Final Order;

- c. Respondent consents to the assessment of the civil penalty (the "Civil Penalty") set forth herein;
- d. Respondent agrees to undertake all actions required by this Consent Agreement;
- e. Respondent hereby expressly waives his right to contest the allegations set forth in this Consent Agreement and Final Order at a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B); and
- f. Respondent waives his right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

37. This Consent Agreement and Final Order shall not relieve Respondent of his obligations to comply with all applicable provisions of federal, state or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344, or any other law. Moreover, Respondent agrees to comply with the applicable requirements of the CWA.

38. This Consent Agreement and the accompanying Final Order, resolves the civil claims against the Respondent for the specific violations alleged herein. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its effective date.

39. This Consent Agreement and Final Order is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this Consent Agreement and Final Order. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

40. All of the terms and conditions of this Consent Agreement and Final Order together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this Consent Agreement and Final Order or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire Consent Agreement and Final Order shall be null and void.

41. Each party to this agreement shall pay its own costs and attorney's fees.

V. PENALTY

42. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty (the "Civil Penalty") in full and complete settlement of EPA's claims as set forth in the Complaint alleging the violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, in the amount of \$4,500.00.

VI. PAYMENT TERMS

43. Respondent shall pay the Civil Penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.31(c), by cashier's or certified check, payable to the "Treasurer, United States of America." Payment shall be mailed to the following address:

U.S. EPA
P.O. Box 360515
Pittsburgh, PA 15251-6515

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

45. Respondent shall submit notice of payment, along with a copy of the check to:

Regional Hearing Clerk (3R000)
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

with copies sent to:

Andrew Duchovnay (3RC20)
Sr. Asst. Regional Counsel
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

46. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge, not to exceed six percent, will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

VII. EFFECTIVE DATE

47. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a forty (40) day public notice period has concluded. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT:

Mr. Scott K Burton
Title
Name

11-13-2007
Date

SO ORDERED:

for Del B. [Signature]
Jon M. Capacasa, Director
Water Protection Division

2/22/08
Date

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In The Matter of:)	
)	
SCOTT K. BRINTON)	Proceeding Under Section
323 RIVERVIEW ROAD)	309(a) of the Clean Water
PEACH BOTTOM, PA 17563)	Act, 33 U.S.C. § 1319(a)
)	
Respondent)	
)	
RIVERVIEW FARMS)	
241 RIVERVIEW ROAD)	
PEACH BOTTOM, PA 17563)	Docket No. CWA-03-2008-0022
)	
Facility)	

CERTIFICATE OF SERVICE

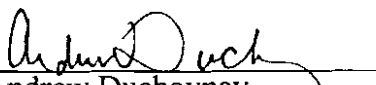
I hereby certify that on this date I caused to be sent the original of the attached Consent Agreement and Final Order, delivered by hand to the:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

and with copies to the following at the addresses listed below, via regular, First Class mail:

Mr. Scott K. Brinton
323 Riverview Road
Peach Bottom, PA 17563

Date: 2/25/08


Andrew Duchovnay
Sr. Assistant Regional Counsel