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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JOHN BEZATES d/b/a
BEZATES FEEDLOT,
Ontario, Oregon

Respondent.

DOCKET NO. CWA-10-2009-0051

**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part VI of this Consent Agreement and Final Order to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 Mr. John Bezates ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this Consent Agreement and Final Order.

1 300 cattle and discharges pollutants to waters of the United States through a man-made ditch,
2 flushing system, or similar man-made device. 40 C.F.R. § 122.26(b)(4), (6).

3 3.5. EPA's regulations define "animal feeding operation" to include any lot or facility
4 where "(i) Animals ... have been, are, or will be stabled or confined and fed or maintained for a
5 total of 45 days or more in any 12-month period, and (ii) Crops, vegetation forage growth, or
6 post-harvest residues are not sustained in the normal growing season over any portion of the lot
7 or facility." 40 C.F.R. § 122.23(b)(1).

8 3.6. In 2003, the State of Oregon issued Oregon Confined Animal Feeding Operation
9 General Permit Number 1 ("CAFO General Permit") pursuant to Section 402 of the CWA, 33
10 U.S.C. § 1342. The CAFO General Permit became effective on August 15, 2003 and authorizes
11 certain discharges of process wastewater from those Oregon CAFOs that subject themselves to
12 its conditions and limitations.

13 3.7. Among the conditions and limitations contained in the CAFO General Permit is a
14 prohibition on the discharge of process waste water from the CAFO's production area to surface
15 waters of the state "except when rainfall events cause an overflow of process waste water from a
16 facility designed, constructed, operated, and maintained to contain all process-generated waste
17 waters plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event." CAFO
18 General Permit at S2.B.

19 3.8. Also among the conditions and limitations contained in the CAFO General Permit
20 is a requirement that the "permittee must at all times properly operate and maintain all facilities
21 and systems used for process waste collection, storage, and utilization, and correct any
22 deficiencies found as soon as possible." CAFO General Permit at S2.H.

23 3.9. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
24 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33
25

1 U.S.C. § 1311 or 1318. Section 309(g)(1) of the CWA also authorizes EPA to assess
2 administrative penalties against any person who has violated any permit condition or limitation
3 in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

4 3.10. Respondent is an individual and therefore a "person" as defined in Section 502(5)
5 of the CWA, 33 U.S.C. § 1362(5).

6 3.11. Respondent is the owner and operator of the Bezates Feedlot, a beef cattle feedlot
7 consisting of approximately eleven confinement pens, in Ontario, Oregon. The Bezates Feedlot
8 is a "concentrated animal feeding operation" as that term is defined in 40 C.F.R. § 122.26(b) and
9 a "confined animal feeding operation" as that term is defined in State law. At all times relevant
10 to these allegations, the Bezates Feedlot had coverage under the CAFO General Permit.

11 3.12. The confinement pens and other production area facilities of the Bezates Feedlot
12 are bordered on the south by Jacobsen Gulch Creek. Jacobsen Gulch Creek is a perennial body
13 of water which flows into the Snake River. The Snake River is an interstate water susceptible to
14 use in interstate or foreign commerce, and thus is a "navigable water" as defined in Section
15 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40
16 C.F.R. § 122.2. As a tributary to the Snake River, Jacobsen Gulch Creek is a "navigable water"
17 as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "waters of the United States"
18 as defined in 40 C.F.R. § 122.2.

19 3.13. On January 14 and 15, 2008, EPA and the Oregon State Department of
20 Agriculture conducted an inspection of the Bezates Feedlot to determine compliance with the
21 CAFO General Permit and the CWA.

22 3.14. On January 14, 2008, the production area of the Bezates Feedlot discharged
23 manure-contaminated process waste water to Jacobsen Gulch Creek. This discharge was not
24 caused by a rainfall event and was not from a facility designed, constructed, operated, and
25

1 maintained to contain all process-generated waste waters plus the runoff and direct precipitation
2 from a 25-year, 24-hour rainfall event. This discharge was therefore not authorized by the
3 CAFO General Permit and violated the CWA.

4 3.15. On January 14 and 15, 2008, a number of the earthen berms used to collect and
5 store the manure and other process wastes generated at the Bezates Feedlot had fallen into
6 disrepair. Respondent's failure to properly operate and maintain these facilities violated Section
7 S2.H of the CAFO General Permit and violated the CWA.

8 3.16. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
9 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each day during
10 which these violations continued, up to a maximum amount of \$157,500.

11 **IV. CONSENT AGREEMENT**

12 4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged
13 herein.

14 4.2. Respondent expressly waives any right to contest the allegations and to appeal the
15 Final Order set forth in Part V, below.

16 4.3. Respondent neither admits nor denies the specific factual allegations contained in
17 Parts III of this Consent Agreement and Final Order.

18 4.4. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has
19 taken into account the nature, circumstances, extent and gravity of the alleged violations, as well
20 as the Respondent's economic benefit of noncompliance, ability to pay, and such other matters as
21 justice may require. After considering all of these factors, EPA has determined and Respondent
22 agrees that an appropriate penalty to settle this action is in the amount of Eight Thousand Dollars
23 (\$8,000.00).

1 4.5. Respondent consents to the issuance of the Final Order set forth in Part V, below,
2 and agrees to pay the total civil penalty set forth in Paragraph 4.4, above within thirty (30) days
3 of the effective date of the Final Order.

4 4.6. Payment under this Consent Agreement and Final Order shall be made by
5 cashier's check or certified check, payable to the order of "Treasurer, United States of America"
6 and delivered to the following address:

7 U.S. Environmental Protection Agency
8 Fines and Penalties
9 Cincinnati Finance Center
 PO Box 979077
 St. Louis, MO 63197-9000

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

11 4.7. Respondent shall serve photocopies of the check described in Paragraph 4.6,
12 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
13 Enforcement at the following addresses:

14 Regional Hearing Clerk
15 U.S. Environmental Protection Agency, Region 10
16 1200 Sixth Avenue, Suite 900, ORC-158
 Seattle, WA 98101

17 Chae Park
18 U.S. Environmental Protection Agency, Region 10
19 1200 Sixth Avenue, Suite 900, OCE-133
 Seattle, WA 98101

20 4.8. If Respondent fails to pay the penalty assessed by this Consent Agreement and
21 Final Order in full by the due date set forth in Paragraph 4.5, above, the entire unpaid balance of
22 penalty and accrued interest shall become immediately due and owing. If Respondent fails to
23 pay the penalty assessed, Respondent may be subject to a civil action to collect the assessed
24 penalty under the CWA, together with interest, fees, costs, and additional penalties described
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1 below. In any collection action, the validity, amount and appropriateness of the penalty shall not
2 be subject to review.

3 4.9. If Respondent fails to pay any portion of the penalty assessed by this Consent
4 Agreement and Final Order in full by the due date set forth in Paragraph 4.5, above, Respondent
5 shall be responsible for payment of the amounts described below:

6 4.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.
7 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate
8 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
9 effective date of the Final Order set forth in Part V, below, provided, however, that no
10 interest shall be payable on any portion of the assessed penalty that is paid within thirty
11 (30) days of the effective date of the Final Order.

12 4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
13 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a
14 timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondent shall
15 pay (in addition to any assessed penalty and interest) attorneys fees and costs for
16 collection proceedings and a quarterly nonpayment penalty for each quarter during which
17 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to
18 twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment
19 penalties which are unpaid as of the beginning of such quarter.

20 4.10. The penalty described in Paragraph 4.4, above, including any additional costs
21 incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA
22 and shall not be deductible for purposes of federal taxes.

23 4.11. Except as described in Subparagraph 4.9.2, above, each party shall bear its own
24 costs in bringing and defending this action.

25

1 4.12. The provisions of this Consent Agreement and Final Order shall bind Respondent
2 and his agents, servants, employees, successors, and assigns.

3 4.13. The above provisions are STIPULATED AND AGREED upon by Respondent
4 and EPA.

5 DATED:

RESPONDENT:

6
7 12/4/08

8 John Bezates
JOHN BEZATES

10 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

11
12 12/9/08

13 R. David Allnut
R. DAVID ALLNUTT
Associate Regional Counsel
For Complainant

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21 **V. FINAL ORDER**

22 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by
23 reference into this Final Order. Respondent is hereby ordered to comply with the foregoing
24 terms of settlement.

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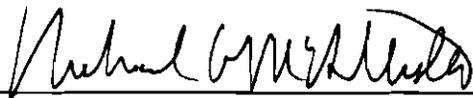
1 5.2. This Consent Agreement and Final Order shall constitute a settlement by EPA of
2 all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In
3 accordance with 40 C.F.R. § 22.31(a), nothing in this Consent Agreement and Final Order shall
4 affect the right of EPA or the United States to pursue appropriate injunctive or other equitable
5 relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order
6 does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all
7 applicable provisions of the CWA, applicable CWA regulations, and/or any permits issued
8 thereunder.

9 5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
10 40 C.F.R. § 22.38(b), the State of Oregon has been given the opportunity to consult with EPA
11 regarding the assessment of the administrative civil penalty against Respondent.

12 5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
13 has published public notice of its intent to assess an administrative penalty against Respondent
14 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days
15 have elapsed since the issuance of this public notice, and EPA has received no petition to set
16 aside the Consent Agreement contained herein.

17 5.5. This Final Order shall become effective upon filing.

18
19 SO ORDERED this 23rd day of January, 2009.

20
21 

22 RICHARD G. McALLISTER
23 Regional Judicial Officer
24 U.S. Environmental Protection Agency
25 Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Bezates Feedlot, DOCKET NO.: CWA-10-2009-0051** was filed with the Regional Hearing Clerk on January 23, 2009.

On January 27, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

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 January 27, 2009, to:

John Bezates, Owner
Bezates Feedlot
4620 Plum Lane
Ontario, Oregon 97914

DATED this 27th day of January 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10