



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 22 2011

CERTIFIED MAIL 70102780000182160188
RETURN RECEIPT REQUESTED

Mr. Lee Mayer
Mayer Farms, Inc.
968 Spearman Road
Newberry, South Carolina 29108

Re: Consent Agreement and Final Order
Lee Mayer #1
Docket No. CWA-04-2011-4520(b)

Dear Mr. Mayer:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Don Joe at (404) 562-9751.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: David Wilson, Chief, Bureau of Water
South Carolina Department of Health
and Environmental Control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
MAYER FARMS, INCORPORATED) CONSENT AGREEMENT AND
LEE MAYER #1) FINAL ORDER
NEWBERRY, SOUTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2011-4524(b)
_____)

RECEIVED
EPA REGION IV
2011 SEP 22 PM 2: 51
HEARING CLERK

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 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*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 (“Complainant”).

II. Allegations

3. At all times relevant to this action, Mayer Farms, Inc. (“Respondent”), was a corporation duly organized and existing under the laws of the State of South Carolina and therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated a dairy operation known as Lee Mayer #1 (“Facility”) located at 968 Spearman Road in Newberry, South Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation’s waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Pursuant to Section 502(b) of the CWA, 33 U.S.C. § 1362(14), a “pollutant” includes agricultural waste.

7. Pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12), a “discharge of a pollutant” means any addition of any pollutant to navigable waters from a point source.

8. Pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(14), a “point source” includes animal feeding operations. This term does not include agricultural stormwater discharges.

9. EPA issued regulations, found at 40 C.F.R. Part 122, for implementing NPDES program requirements and permit conditions.

10. An “animal feeding operation” (“AFO”) is defined at 40 C.F.R. § 122.23(b)(1) as a lot or facility where:

- (i) Animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (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.

11. A “concentrated animal feeding operation” (“CAFO”) is defined at 40 C.F.R. § 122.23(b)(2) as an AFO that is defined as a Large CAFO or a Medium CAFO, or that is designated as a CAFO upon a determination that the AFO is a significant contributor of pollutants to waters of the United States.

12. A “Large CAFO” is defined at 40 C.F.R. § 122.23(d)(4) as an AFO that stables or confines, *inter alia*, more than seven hundred (700) mature dairy cows, whether milked or dry.

13. A “land application area” is defined at 40 C.F.R. § 122.23(B)(3) as land under control of an AFO owner or operator to which manure, litter or process wastewater from the production area is or may be applied.

14. Pursuant to 40 C.F.R. § 122.23(e), land application discharges are point source discharges subject to the NPDES permit requirements, except where it is an agricultural stormwater discharge. Agricultural stormwater discharges are not point sources pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. Pursuant to 40 C.F.R. § 122.23(e)(1), for unpermitted Large CAFOs, precipitation-related discharges of manure, litter or process wastewater from land application areas are considered an agricultural stormwater discharge only where the manure, litter or process wastewater has been land-applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients, as specified in 40 C.F.R. § 122.42(e)(1)(vi) through (ix).

16. 40 C.F.R. §§ 122.23(e)(1) and 122.42(e)(1)(vi) through (ix) require land application in accordance with site-specific nutrient management practices including appropriate site-specific conservation management practices to control runoff of pollutants to waters of the United States; appropriate testing of manure, litter and process wastewater and soil; land application of manure, litter or process wastewater to ensure appropriate agricultural utilization; and documentation of the above.

17. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the EPA or delegated states to administer the NPDES program, including the issuance of NPDES permits allowing for the discharge of pollutants from point sources into navigable waters, subject to specific terms and conditions. The EPA has delegated to the State of South Carolina, through the South Carolina Department of Health and Environmental Control (“SCDEC”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. §1342(b).

18. On May 1, 2003, SCDHEC issued a *Bureau of Water Agricultural Permit for No Discharge* (“Permit”) No. 18.390-AG, to the Respondent for the operation of its Facility as a no-discharge agricultural manure and animal by-products treatment and collection system to be operated in accordance with R.6-43, Part 200.

19. The Facility is a Large CAFO under 40 C.F.R. § 122.23(b)(4) because it stables or confines at least seven hundred (700) mature dairy cows for forty-five (45) days or more in any twelve (12) month period; and crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the Facility.

20. The Respondent submitted a waste management plan to SCDHEC on October 19, 1995, and an addendum to the waste management plan on April 10, 2009, for large application areas to which manure is applied at the Facility. These documents are the Facility’s Waste Management Plan (“WMP”).

21. Section 6.1 of the Facility’s WMP specifies that only a single crop (corn for silage) and a cover crop (wheat) shall be planted at Tract 601 Field 16 (601-E).

22. Section 5.2.2 of the Facility’s WMP specifies that nitrogen containing fertilizers shall not be applied more than thirty (30) days prior to planting of a crop, or during the dormant season of perennial crops.

23. Section 6.8 of the Facility’s WMP recommends an annual application rate for nitrogen of one-hundred and forty (140) pounds per acre for corn.

24. Section 7.4 of the Facility’s WMP requires annual soil testing for all fields that receive manure applications.

25. SCDHEC R.61-43, Part 200.90(B) requires a minimum freeboard of at least one and one-half feet for animal manure lagoons and storage ponds.

26. On March 10, 2010, the EPA in conjunction with SCDHEC performed a Compliance Evaluation Inspection (“CEI”) of the Facility to evaluate the treatment and disposal of manure wastewater in accordance with CWA. On May 3 and 4, 2010, the EPA conducted a Compliance Sampling Evaluation (“SCI”) at the Facility.

27. As a result of the CEI and the CSI and review of records and information submitted by the Respondent, the EPA inspectors observed the following:

- A. Corn and sorghum silage (double crop) had been planted from July 24, 2009, to November 5, 2009 at Tract 601 Field 16 (60-E), which is not in compliance with Section 6.1 of the WMP.
- B. At Trace 601 Field 16 (601-E), sorghum was planted on July 24, 2009, and harvested on November 5, 2009; the field did not have crop cover until corn was planted again on April 1, 2010; and the field was irrigated with lagoon liquid on at least six (6) separate days (November 10-11, 2009, December 20-21, 2009, and February 5-6, 2010) between the sorghum harvest and the following corn planting, totaling 5,184,000 gallons. These nutrient applications were not in compliance with Section 5.2.2 of the WMP.
- C. The Respondent applied two hundred and ninety (290) pounds per acre per year of nitrogen to its corn crops at Tract 601 Field 16 (601-E) from May 2, 2009, to March 2, 2010, which is not in compliance with Section 6.8 of the WMP.
- D. The Respondent did not conduct annual soil testing at Tract 601 Field 16 (601-E) in 2009, which is not in compliance with Section 7.2 of the WMP.
- E. The water level gauge in the Facility’s Lagoon 1 indicated the liquid level was approximately eight (8) inches below the top of the dike, which is not in compliance with SCDHEC R. 61-43, Part 200.90(B). There was evidence of overflow from three (3) areas on the bank of Lagoon 1.
- F. Stormwater from the land application field Tract 601 Field 16 (601-E) was observed being discharged into an unnamed tributary, a water of the United States, and then into the Bush River, a traditionally navigable water.

28. The stormwater discharge from Tract 601 Field 16 (601-E) is a point source discharge of pollutants into a water of the United States because the Respondent did not comply with its WMP to ensure appropriate agricultural utilization of nutrients.

29. Therefore, the Respondent is in violation of Section 301(a) and 308 of the CWA, 33 U.S.C. §§ 1311(a) and 1318, for discharging pollutants from a point source into navigable waters without an NPDES permit issued pursuant to Section 502 of the CWA, 33 U.S.C. § 1342.

III. Stipulations and Findings

30. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

31. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

32. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

33. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

34. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

35. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

36. Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

37. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Two Thousand Seven Hundred and Seventeen Dollars (\$2,717) is an appropriate civil penalty to settle this action.

38. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

39. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

40. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

41. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

42. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

43. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

44. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

45. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

46. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

47. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

48. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

49. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Judy Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

For the Respondent:

Lee Mayer
Mayer Farms Incorporated
968 Spearman Road
Newberry, South Carolina 29108

50. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

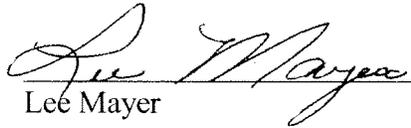
51. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of South Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

52. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For the RESPONDENT, MAYER FARMS, INCORPORATED:



Lee Mayer

Date: 7/27/11

For the COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Date: 9/22/11

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
MAYER FARMS, INCORPORATED) CONSENT AGREEMENT AND
LEE MAYER #1) FINAL ORDER
NEWBERRY, SOUTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2011-4520(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Sept. 22, 2011


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Mayer Farms, Incorporated, **Docket No. CWA-04-2011-44520(b)**, filed with the Regional Hearing Clerk on 9/22, 2011, was served on 9/22, 2011, in the manner specified to each of the persons listed below.

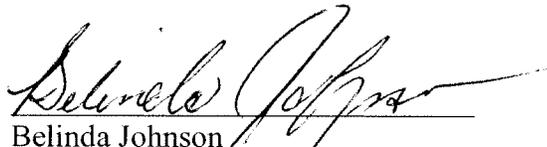
By hand-delivery:

Judy Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Mr. Lee Mayer
Mayer Farms Incorporated
968 Spearman Road
Newberry, South Carolina 29108

David Wilson
Chief, Bureau of Water
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201


Belinda Johnson
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 8/9/11
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
SF Judicial Order/Consent Decree. FMS COLLECTS.
Other Receivables
This is an original debt.
This is a modification.

PAYEE: Mayer Farms, Inc., Lee Mayer #1, Newberry, SC
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 2,717
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2011-4520 (b)

The Site-Specific Superfund (SF) Account Number:

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is:
If you have any questions call: in the Financial Management Section,
Telephone Number:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice/RH 1647 P.O. BOX 7611, Benjamin Franklin Station Washington, DC 20044
2. Originating Office (ORC)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:

- 1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2011-4520(b)

Total Amount Due: \$ 2,717

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____