BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



| | | |
|---|---|---|
| In re: | ) | Consent Agreement and Final Order |
| Consent Agreements and Proposed Final Orders for Animal Feeding Operations | ) | CAA-HQ-2005-xx<br>CERCLA-HQ-2005-xx<br>EPCRA-HQ-2005-xx[1] |

FINAL ORDER

[1] P&W Eggs (Docket No. CAA-HQ-2006-0001, CERCLA-HQ-2006-0001, EPCRA-HQ-2006-0001); MCM Poultry Farm (Docket No. CAA-HQ-2006-0002, CERCLA-HQ-2006-0002, EPCRA-HQ-2006-0002); Water Works (Docket No. CAA-HQ-2006-0003, CERCLA-HQ-2006-0003, EPCRA-HQ-2006-0003); Bob Wendel & Son's Poultry (Docket No. CAA-HQ-2006-0004, CERCLA-HQ-2006-0004, EPCRA-HQ-2006-0004); K-Brand Farms (Docket No. CAA-HQ-2006-0005, CERCLA-HQ-2006-0005, EPCRA-HQ-2006-0005); Henningsen Foods, Inc. (Docket No. CAA-HQ-2006-0006, CERCLA-HQ-2006-0006, EPCRA-HQ-2006-0006); Lennartz Farms (Docket No. CAA-HQ-2006-0007, CERCLA-HQ-2006-0007, EPCRA-HQ-2006-0007); Center Fresh Egg Farm LLP (Docket No. CAA-HQ-2006-0008, CERCLA-HQ-2006-0008, EPCRA-HQ-2006-0008); Badgett Enterprises LTD (Docket No. CAA-HQ-2006-0009, CERCLA-HQ-2006-0009, EPCRA-HQ-2006-0009); Greg B. Nelson (Docket No. CAA-HQ-2006-0010, CERCLA-HQ-2006-0010, EPCRA-HQ-2006-0010); Fairway Farms (Docket No. CAA-HQ-2006-0011, CERCLA-HQ-2006-0011, EPCRA-HQ-2006-0011); Brenton Brothers, Inc. (Docket No. CAA-HQ-2006-0012, CERCLA-HQ-2006-0012, EPCRA-HQ-2006-0012); Roe Farm, Inc. (Docket No. CAA-HQ-2006-00013, CERCLA-HQ-2006-0013, EPCRA-HQ-2006-0013); Terry Finnerty (Docket No. CAA-HQ-2006-0014, CERCLA-HQ-2006-0014, EPCRA-HQ-2006-0014); Jerry and Ruth Warren (Docket No. CAA-HQ-2006-0015, CERCLA-HQ-2006-0015, EPCRA-HQ-2006-0015); E&S Swine, Inc. (Docket No. CAA-HQ-2006-0016, CERCLA-HQ-2006-0016, EPCRA-HQ-2006-0016); C&C Farms (Docket No. CAA-HQ-2006-0017, CERCLA-HQ-2006-0017, EPCRA-HQ-2006-0017); Williamson Swine Farm (Docket No. CAA-HQ-2006-0018, CERCLA-HQ-2006-0018, EPCRA-HQ-2006-0018); James K. Zoltenko (Docket No. CAA-HQ-2006-0019, CERCLA-HQ-2006-0019, EPCRA-HQ-2006-0019); Kober Farms LLC (Docket No. CAA-HQ-2006-0020, CERCLA-HQ-2006-0020, EPCRA-HQ-2006-0020).

## I. *INTRODUCTION*

On November 9, 2005, the Environmental Appeals Board ("Board") received for review and ratification twenty Consent Agreements and Proposed Final Orders ("Agreements")[2] from the EPA's Office of Enforcement and Compliance Assurance ("OECA"), in accordance with 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. pt. 22 ("Part 22").[3] The Agreements are part of a large group of proposed agreements EPA has received in response to a nationwide offer EPA made to animal feeding operations ("AFOs") in the egg, broiler, chicken, turkey, dairy, and swine industries that meet the definition of an AFO under the Clean Water Act. *See* Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 4958, 4959 (Jan. 31, 2005). EPA

---

[2] This Order applies to all AFOs subject to the Consent Agreements and Final Orders listed in footnote 1 (collectively, "Respondents".). *See supra* note 1.

[3] According to section 22.18(b)(3), settlements or consent agreements arising from proceedings commenced at EPA Headquarters need the Board's approval before becoming final Agency action. 40 C.F.R. § 22.18(b)(3) ("No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from * * *, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement."). *See also id.* § 22.4(a) ("The Environmental Appeals Board * * *, approves settlements of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters").

offered these AFOs the opportunity to sign consent agreements to resolve potential liabilities under the Clean Air Act ("CAA"), CAA §§ 101-618, 42 U.S.C §§ 7401-7671q, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), CERCLA §§ 101-405, 42 U.S.C. §§ 9601-967, and the Emergency Planning and Community Right-To-Know Act ("EPCRA"), EPCRA §§ 301-330, 42 U.S.C. §§ 1101-11050.[4] *Id.*; *see also* Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 40016 (July 12, 2005).

---

[4] EPA began discussions with AFO industry representatives in 2001 about the concept of a voluntary enforcement agreement designed to bring the industry into compliance, largely by addressing data problems and lack of reliable emissions factors for AFOs that made it difficult to determine applicability of, and compliance with, various environmental regulations. Memorandum on Consent Agreements and Proposed Final Orders for Animal Feeding Operations from Granta Y. Nakayama to Environmental Appeals Board (Nov. 4, 2005) at 2.

According to OECA, EPA opted to offer AFOs the opportunity to enter into these agreements because, even though the Agency has the authority on a case-by-case basis to require AFOs to monitor their emissions and comply with applicable federal laws, that process proved to be extremely difficult and time-consuming, in part because of the uncertainties related to air emissions from AFOs. *Id.* These uncertainties stem from the lack of reliable protocols or methodologies for measuring air emissions from this industry. In an effort to better understand these problems, EPA and the U.S. Department of Agriculture asked the National Academy of Science ("NAS") to review and evaluate the scientific basis for estimating emissions of certain air pollutants. The NAS confirmed that practical protocols and scientifically sound emission monitoring methodologies needed to be developed and that the available data, which were limited at best, were inadequate to estimate air emissions. *Id.* at 2-3. Based on these findings, the Agency decided to make a key element of the Agreements a requirement for participant AFOs to fund a nationwide emission monitoring study ("Monitoring Fund").

The twenty Agreements before us would settle liability for certain potential violations of the CAA, CERCLA, and EPCRA by the companies listed in footnote 1 of this Final Order. As part of the Agreements, the listed companies will pay a civil penalty based on the number and size of the farms and the number of animals at each AFO covered by the Agreement, in accordance with a table set forth therein. The companies would also share responsibility for funding a two-year nationwide emissions monitoring study aimed at the development of methodologies for estimating emissions from AFOs, which in turn would be used to determine participating companies' regulatory status and compliance under the CAA, CERCLA, and EPCRA. As part of the Agreements, the companies would receive a release and covenant not to sue for potential civil violations of specified requirements of these statutes that may have already occurred or that may occur during the study period.

## II. *PROCEDURAL HISTORY*

A preliminarily examination of the proposed Agreements and the supporting documentation OECA submitted[5], prompted the Board to ask for additional information. The Board identified three

---

[5] *See, e.g.*, Memorandum on Consent Agreements and Proposed Final Orders for Animal Feeding Operations from Granta Y. Nakayama to Environmental Appeals Board (Nov. 4, 2005).

areas that needed clarification and issued an order requesting OECA to file a supplemental memorandum answering several questions. The Board also scheduled a hearing inviting OECA and any interested Respondents to address the areas identified in the order. *See* Order Scheduling Hearing and Requesting Supplemental Information (EAB, Nov. 18, 2005).

The Board first asked questions about the scope of Board review in the context of consent agreements. Specifically, the Board asked whether, in OECA's view, the Board has jurisdiction to independently review the compliance aspects of the Agreements along with the assessed penalty, or just the penalty component of the Agreements. The Board also asked OECA to confirm that the contribution to the Monitoring Fund did not constitute any part of the penalty in this case, but rather is part of the compliance aspects of the Agreements, and to provide the statutory or regulatory basis for collecting money from Respondents to conduct the nationwide emissions monitoring study. The second area the Board felt needed clarification pertained to Part 22. The Board asked OECA to explain how the Agreements satisfy the prerequisites for consent agreements under Part 22, specifically the requirements that a consent agreement reference the provisions "which respondent is alleged to have violated" and contain a "concise statement of factual basis for each alleged

violation." Finally, the Board asked questions about the application of the penalty policy and statutory criteria in the determination of the penalty amounts stipulated in the Agreements.

On December 6, 2005, OECA filed a supplemental memorandum addressing the various questions posed by the Board. *See* Supplemental Memorandum in Support of the Consent Agreements and Proposed Final Orders for Animal Feeding Operations ("Supplemental Memorandum"). On that same day, the Board received a filing from Crowell & Moring LLP, counsel for six of the Respondents,[6] requesting to participate in the hearing. By order dated December 8, 2005, the Board granted Respondents' request. *See* Order Granting Opportunity to Participate at Hearing and Allocating Time (EAB, Dec. 8, 2005). Also, on December 6, 2005, the Board received a joint request from various community and environmental groups,[7] collectively referred to as "AIR", seeking leave to intervene and to file a memorandum to respond to OECA's supplemental brief, and asking to participate

---

[6] Crowell & Moring LLP represents the following six Respondents: Center Fresh Egg Farm, LLP, E&S Swine, Inc., Fairway Farms, Greg B. Nelson, Roe Farm, Inc., and James A. Zoltenko.

[7] The Association of Irritated Residents, Clean Water Action Alliance of Minnesota, Community Association for Restoration of the Environment, Environmental Integrity Project, Iowa Citizens for Community Improvement, and Sierra Club filed the joint request.

at the hearing. By order dated December 8, 2005, the Board granted AIR the opportunity to participate at the hearing. *See id.* The Board, however, denied AIR's request to intervene, but allowed AIR to file a non-party brief under 40 C.F.R. § 22.11(b) by no later than December 20, 2005. *See* Order Denying Motion for Leave to Intervene (EAB, Dec. 8, 2005).

The hearing was held on December 13, 2005. OECA, counsel for six of the Respondents, and AIR participated at the hearing. At the hearing, OECA and Respondents' counsel asked for an extension of time to file a response to AIR's non-party brief. By order dated December 15, 2005, the Board granted the requested extension allowing OECA and Respondents to file their responses no later than January 6, 2006. *See* Order Granting Request for Extension of Time to File Response (EAB, Dec. 15, 2005). On December 20, 2005, AIR filed its non-party brief. *See* Brief of Association of Irritated Residents, et al. in Opposition to the Consent Agreement and Proposed Final Orders for Animal Feeding Operations ("AIR's Brief"). On January 6, 2006, OECA and Respondents each filed a response brief to AIR's non-party brief. *See* Complainant's Brief in Response to the Non-Party Brief Filed on December 20, 2005 by the Association of Irritated Residents, Et Al ("OECA's Response to AIR's Brief"); Respondents' Reply to the Brief of Association of Irritated Residents, Et Al., In

Opposition to the Consent Agreements and Proposed Final Orders for Animal Feeding Operations ("Respondents' Response to AIR's Brief").

Finally, based on representations made by OECA in its briefs and at the hearing that the only portions of the proposed Consent Agreements and Final Orders that were intended to be enforceable were the penalty provisions, the Board requested on January 13, 2006, that OECA submit a reformulated order more reflective of these representations. *See* Order Directing OECA to Submit a Reformulated Final Order (EAB, Jan. 13, 2006). OECA filed its response on January 25, 2006. *See* Complainant's Proposed Final Order.

## III. *FINDINGS*

### A. *The Agreements Are Administrative Penalty Orders Reviewable by the Board.*

In addressing the first set of questions (i.e., scope of Board review), OECA explains that the proposed Agreements are administrative penalty orders. Supplemental Memorandum at 5; Hearing Transcript at 9, 16-18. OECA clarifies that the Agreements do not include any enforceable compliance aspects.

Supplemental Memorandum at 5; *see also* OECA's Response to AIR's Brief at 7 ("Because the proposed Agreements are administrative penalty orders, the only enforceable requirement is the requirement to pay the assessed civil penalty within 30 days of the receipt by Respondents of an executed copy of the Agreement."). While, in OECA's view, the Board has authority to review both compliance and penalty orders, OECA reiterates that the Agreements under scrutiny do not contain any enforceable compliance aspects. Supplemental Memorandum at 7-11.

OECA further explains that the contribution to the Monitoring Fund does not constitute any part of the penalty assessed. *Id.* at 5, 11. Rather, the contributions to the Fund are separate requirements of the release and covenant not to sue. *Id.* Therefore, OECA adds, failure to contribute to the Fund would not result in enforcement of the order but rather terminates the release and covenant not to sue. *Id.* at 5. Finally, OECA notes that the Monitoring Fund money goes directly to a nonprofit entity established by the Respondents and, thus, EPA is not collecting money from the Respondents for the Fund. *Id.* 11. The Respondents, for their part, will hire an independent monitoring contractor to carry out the monitoring program. *Id.* As to the statutory basis for the Monitoring Fund, OECA explains that section 113(a) of the CAA allows EPA to issue

compliance orders, and section 114(a)(1)(D) of the CAA allows EPA to require any person who owns or operates an emission source to sample their emissions in accordance with such procedures as prescribed by EPA. *Id.* at 12.

For its part, AIR opposes the Agreements, arguing *inter alia* that the Agreements violate the CAA. *See* AIR's Brief at 11. Specifically, AIR argues that whether the Board views the Agreements as administrative penalty orders or administrative compliance orders, the Agreements exceed the 12-month period in section 113(d)(1)[8] and the one-year compliance deadline in section 113(a)(4),[9] and therefore violate the CAA. Like OECA, AIR does

---

[8] Section 113(d) of the CAA limits EPA's authority to issue administrative penalty orders "to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action." CAA § 113(d)(1), 42 U.S.C. § 7413(d)(1).

AIR argues that there has been no such determination by the Attorney General or his delegatee.

[9] Section 113(a)(4), which governs the issuance of administrative compliance orders, requires "the person to whom [an administrative compliance order] was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the order was issued." CAA § 113(a)(4), 42 U.S.C. § 7413(a)(4).

AIR argues that under the Agreements, compliance will not occur within one year of the issuance of the orders.

not dispute the Board's authority to review these Agreements. *Id.* at 19.

We agree with OECA and AIR that the Board has authority to review and approve administrative penalty orders such as the proposed Agreements. *See* 40 C.F.R. §§ 22.1(a)(2), (7)-(8), 22.4(a), 22.18(b)(2).

We disagree with AIR's argument that the Agreements violate the CAA. First, we note that, contrary to AIR's assertions,[10] OECA did comply with the requirements of section 113(d)(1) by requesting and obtaining from the Department of Justice a waiver of the 12-month limitation on EPA's authority to initiate an administrative penalty action. *See* Letter from Bruce S. Gelber (Chief, DOJ Environmental Enforcement Section) to Robert Kaplan (Director, EPA Special Litigation and Projects Division) (January 27, 2005)(Attachment LL to Memorandum on Consent Agreements and Proposed Final Orders for Animal Feeding Operations from Granta Y. Nakayama to Environmental Appeals Board (Nov. 4, 2005)).

Second, the one-year compliance limitation specified in section 113(a)(4)[11] does not apply to the Agreements at hand,

---

[10] *See supra* note 8.

[11] *See supra* note 9.

which are administrative penalty orders governed by a different provision of the CAA -- section 113(d), 42 U.S.C. 7413(d). In any event, as OECA noted, the only enforceable requirement of the orders is the requirement to pay the assessed civil penalty within 30 days of the receipt by Respondents of an executed copy of the Agreement, which would not contravene a one-year limitation.

B. *The Agreements Do Not Violate the CAA and/or Part 22.*

As previously noted, the Board asked OECA to explain how the Agreements satisfy the prerequisites for consent agreements under Part 22. Part 22 requires that consent agreements contain the elements described in sections 22.14(a)(2) and (3), which require that an agreement specifically state the statutory or regulatory provisions "which respondent is alleged to have violated" (40 C.F.R. § 22.41(a)(2)) and include a "concise statement of factual basis for each alleged violation" (*id.* § 22.14(a)(3)). *See* 40 C.F.R. § 22.18(b)(2).

OECA argues that the Agreements satisfy the requirements in Part 22 by articulating the statutory and regulatory provisions for which Respondents are potentially liable. Supplemental Memorandum at 13. More particularly, OECA explains, paragraph 4

indicates that the Agreement resolves civil liability for certain potential violations of the CAA, CERCLA, and EPCRA at the Farm(s) identified in Attachment A of each Agreement. *Id.* 13-14; *see also* Agreement at ¶4. Paragraph 26 identifies the statutory requirements that Respondents may have violated, as follows: "civil violations of the permitting requirements contained in Title I, Parts C and D, and Title V of the CAA, and any other federally enforceable State Implementation Plan (SIP) requirements for major or minor sources based on quantities, rates, or concentrations of air emissions of pollutants that will be monitored under this Agreement, namely, Volatile Organic Compounds (VOCs), Hydrogen Sulfide (H2S), Particulate Matter (TSP, PM10, and PM2.5), and Ammonia (NH3)," and civil violations of CERCLA section 103 or EPCRA section 304 from certain air emissions of H2S or NH3. *See* Agreement at ¶26. Meanwhile, paragraph 35 identifies the type of violations EPA releases and covenants not to sue if certain conditions are meet. *See id.* at ¶35.

In this regard, Respondents add that the Agreements clearly identify which federally-enforceable air emission requirements

are covered by the Agreements (paragraph 26) and which are not (paragraph 27).[12] Respondents' Response to AIR's Brief at 4.

While the articulation of the requirements that are potentially being violated is not as specific as AIR would like, we believe the requirements are sufficiently ascertainable by reference to the SIP so as to satisfy 40 C.F.R. § 22.14(a)(2) particularly, as discussed below, in a settlement context.

OECA further explains that the factual basis for each potential violation is found in paragraphs 4, 11 and 14[13] of the Agreements and in Attachment A[14] to each Agreement. Supplemental Memorandum at 14. In Attachment A, each Respondent identifies its Farm(s) and any Emission Units at the Farm. *See* Agreement

---

[12] Indeed, paragraph 27 clarifies that the release and covenant not to sue described in paragraphs 26 and 35 only applies to the requirements identified in such paragraphs and to emissions from Agricultural Waste at Emission Units and does not extend to any other requirements such as emissions from other equipment or activities co-located at the Farm, activities at open cattle feedlots for beef production, CAA permitting requirements triggered by an expansion of a Farm beyond its design capacity as of the date of execution of the Agreement, or, requirements that are not triggered by the quantity concentration or rate of emission of VOCs, H2S, Particulate Matter or NH3, among others. *See* Agreement at ¶27.

[13] *See infra* note 15.

[14] Attachment A contains a Farm and Emission Unit(s) Information Sheet, describing each Farm and each Emission Unit within a Farm.

Att. A. By identifying a Farm, each Respondent asserts that the Farm meets the definition of a Farm in the Agreements[15] and contains at least one Emission Unit at the Farm. By identifying an Emission Unit at a Farm, each Respondent asserts that the Emission Unit meets the definition of an Emission Unit in the Agreements, which paragraph 11 defines as any part of a Farm that emits or may emit VOCs, H2S, NH3 or PM and is either a building, enclosure or structure that permanently or temporarily houses Agricultural Livestock, or a lagoon or installation that is used for storage and/or treatment. *Id.* at ¶11, Att. A.

Respondents add that this satisfies the requirements for a statement of factual basis. The Agreements and Attachment A, Respondents argue, clearly specify the Farm's covered facilities, the number and type of animals, and the air emissions covered by the Agreements. Respondents' Response to AIR's Brief at 5-6.

We agree that Attachment A provides sufficient detail as to which facilities are covered by the Agreements.

---

[15] Paragraph 14 defines the term "Farm" as "the production area(s) of an animal feeding operation, adjacent and under common ownership, where animals are confined, including animal lots, houses or barns; and Agricultural Waste handling and storage facilities." Agreement at ¶14.

AIR argues further that the Agreements violate Part 22 by failing to make specific allegations based upon violations of particular SIP requirements, that the agreements fail to allege emissions to establish liability (*i.e.*, by failing to allege that emissions at a participating facility exceed various thresholds that trigger permit obligations or reporting requirements), and that OECA failed to justify the use of potential violations. AIR's Brief at 6-11.

OECA acknowledges that precise proof in support of civil liability is exceedingly difficult and would, as a practical matter, not be possible on a widespread basis. Indeed, as previously noted, development of accurate and reliable emission estimating methodologies is a key goal of the national monitoring study.[16] Supplemental Memorandum at 16. Nonetheless, OECA points out, the potential for violations of the CAA at Respondent's facilities is currently known, and the allegation of potential violations is reasonably based on considerations such as the type of emission unit, number and type of animals, location, and description and layout of the barns and lagoons. *Id.* For instance, OECA cites to various studies that describe a

---

[16] *See* Hearing Transcript at 8 (stating that the most important part of the agreement is the nationwide monitoring study because it will help to "put these farms on the road to compliance").

correlation between exceedances of the NH3 threshold requirements and the number of animals on a farm. Here, most of the Respondents have animals in excess of the numbers identified by these studies. *See* Supplemental Memorandum at 15.

We find that the Agreements do not violate the CAA or Part 22. While the Agreements may not contain the level of specificity otherwise expected in adversarial cases, the Agreements nonetheless provide an identification of the provisions "which respondent is alleged to have violated" and a "statement of factual basis for each alleged violation" sufficient to support a settlement. Simply put, the Agreements are clear as to what is being settled. To require more under the unique circumstances of this case would create a large and unnecessary burden when applied to the large number of AFOs being addressed by these and similar agreements. Further, requiring a greater level of specificity as to current emissions runs counter to the policy explicitly stated in Part 22 that "[t]he Agency encourages settlements of a proceeding *at any time* if the settlement is consistent with the provisions and objectives of the Act and applicable regulations." 40 C.F.R. § 22.18(b) (emphasis added).[17]

[17] As OECA stated during the hearing, in this particular settlement the parties did what is ordinarily expected in settlements -- the parties agreed to compromise their claims

While the burden of presentation and persuasion that a violation occurred falls on the complainant, and failure to establish a prima facie case or a right to relief on the part of the complainant may be cause for dismissing a complaint, *see* 40 C.F.R. §§ 22.20, .24, the level of specificity in a complaint required in the adversarial context is not necessarily the level needed in the context of a consent agreement. As OECA noted, in the adversarial context, respondents need sufficient information to be able to answer the complaint. An inadequate complaint in an adversarial proceeding may not provide adequate notice of the violations and therefore impair a respondent's ability to formulate a defense. This, however, is not a concern in the context of a consent agreement, for no answer is required and all the parties are expected to know and understand the allegations and the terms of the agreement to which they voluntarily give consent.

The policy underlying the requirement that consent agreements must identify the legal and factual basis of the alleged violations is to create a public record that clearly identifies the causes of action upon which a case is based. *See* Consolidated Rules of Practice Governing the Administrative

---

before the claims were fully developed. *See* Hearing Transcript at 10.

Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 63 Fed. Reg. 9464, 9471 (Feb. 25, 1998) ("Paragraph [22.18](b)(2) also establishes additional content requirements for consent agreements in cases where the complainant proposes to simultaneously commence and conclude a case through filing of a consent agreement and consent order pursuant to § 22.13(b) * * *. These additional content requirements should assure that the *public record clearly identifies the causes of action upon which such cases are based.*")(emphasis added). Having a clear public record is particularly important in cases where the applicable statute requires public notice of a proposal to assess penalties for specific violations. *See* 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, 64 Fed. Reg. 40138, 40157 (July 23, 1999)("This [referring to the interest of assuring a clear public record] is particularly important where statutes require public notice of a proposal to assess penalties for specific violations. Such statutes envision that interested members of the public will have had notice of all violations cited in the complaint and all violations resolved by consent agreement, in order to properly avail themselves of their

statutory rights as to those actions."). Significantly, none of the statutes addressed in the Agreements require public notice of proposed settlements. However, we note that OECA published the model Agreement in the Federal Register, and received and responded to public comments. *See* 70 Fed. Reg. 4958 (Jan. 31, 2005); 70 Fed. Reg. 40016 (July 12, 2005). We believe that, in any event, these Agreements clearly identify the causes of action, and that OECA has done what the law requires to create a clear public record.

Our finding as to the sufficiency of these Agreements is consistent with a recent decision by the District Court for the Northern District of California in *U.S. v. Chevron USA, Inc.*, 380 F. Supp. 2d 1104 (N.D. Cal. 2005). In that case, the United States and Chevron lodged a consent decree with the District Court seeking to settle *potential* violations of the CAA, CERCLA, and EPCRA at five Chevron refineries. The complaint, filed along with the consent decree, contained general allegations of violations of these statutes. A number of public interest groups challenged the consent decree arguing, among other things, that EPA did not conduct sufficient investigations. Rather, these groups asserted that EPA had conducted a minimal investigation at one of the five Chevron facilities and no investigation at the others. While the court agreed with the public interest groups

that the government did essentially no site-specific investigation to determine the scope of defendant's noncompliance, the court, nonetheless, entered the consent decree on the basis that the consent decree resolved issues within the general scope of the complaint and did not violate the CAA. Specifically, the court stated:

> A consent decree need only "com[e] within the general scope of the case made by the pleadings" and a federal court is "not necessarily barred from entering a consent decree merely because the consent decree provides broader relief than the court could have awarded after a trial." Here, the complaint seeks the broad objectives of remedying alleged widespread violations of several environmental laws. The Consent Decree resolves issues within that general scope and does not violate the Clean Air Act.

*Chevron*, 380 F. Supp. 2d at 1110 (citations omitted). In addition, the court found persuasive EPA's justification for adopting what challengers claimed to be an insufficiently aggressive approach. EPA explained that its approach was to resolve "widespread non-compliance in the petroleum refinery industry by entering into global settlements without spending large amounts of agency resources on investigation or litigation" because "problems [would be resolved] earlier and at lesser expense" for the parties. *Id.* at 1112-1113. The court was persuaded, stating that: "While it is almost certainly true that EPA could have adopted a more aggressive strategy and thereby

secured even greater benefits in this settlement, EPA is reasonable in believing that by doing so it may have been deprived of the resources to enter into other settlements against other refiners. Because EPA's justification is reasonable, the negotiations leading up to entry of the Consent Decree were not procedurally unfair." *Id.* at 1113.

In its decision, the court specifically rejected concerns that the consent decree took too long to achieve its environmental benefits and in the interim allowed Chevron to continue illegally polluting while being shielded from liability. The court stated "because of the complexity of Clean Air Act litigation, it was reasonable for EPA to conclude that even a due date eight years after the signing of the Consent Decree may create environmental benefits earlier than litigating." *Id.* at 1118. The court further stated that "considering the substantial risk of going to trial, coupled with the important benefits secured by the Consent Decree, this Court does not find that the penalty imposed by the decree is unreasonable." *Id.* at 1120. The court concluded that "EPA's choice to avoid litigation in favor of a broad-based settlement strategy may have the potential to win greater environmental benefits in the long run." *Id.* at 1121.

In this case, OECA explains that the use of section 114[18] authority has proven difficult and time-consuming in large part because of problems associated with the lack of standardized emission monitoring methodologies.[19] OECA therefore opted to bring these facilities into compliance by adopting a wide-spread approach to remedying violations of the CAA, CERCLA, and EPCRA. This approach, OECA asserts, will render results faster than any other means available to OECA, will improve the environment and will provide a level playing field for all participants. Hearing Transcript at 8.

Respondents elaborate on this topic by stressing that section 114 actions are time-consuming and expensive for both the Agency and AFOs and conclude that the Agreements will produce more useful data at a lower overall cost for all the parties, and the monitoring study will produce nationally applicable data in

---

[18] Section 114 authorizes the Administrator to, for the purpose of determining whether a person is in violation of any implementation plan standards or emission requirements, require any person who owns or operates any emission source to, among other things, use and maintain monitoring equipment or sample emissions. CAA § 114(a)(1), 42 U.S.C. § 7414(a)(1).

AIR argues that OECA should have used its existing CAA section 114 authority to bring the AFO industry into compliance. AIR's Brief at 3.

[19] *See supra* note 4.

about the same time as one section 114 action for one farm. Respondents' Response to AIR's Brief at 2-3.[20]

We find that the Agreements conform to the general objectives of the CAA, CERCLA, and EPCRA for they seek to remedy violations of these statutes. *See* 40 C.F.R. § 22.18 (encouraging settlements as long as settlements are consistent with the provisions and objectives of the Act and applicable regulations). In addition, the approach OECA adopted is consistent with the well-settled principle that EPA retains discretion as to how to bring a facility into compliance. While we need not provide to

---

[20] According to Respondents, the cost of individual monitoring to help estimate air emissions from farms nationwide could amount to hundreds of thousands of dollars for each AFO. Respondents' Response to AIR's Brief at 2. Respondents estimate that the cost of determining emissions from AFOs nationwide will be about $750,000.00 per farm and $360,000.00 per lagoon. *Id.* Thus, Respondents add, an attempt by EPA to select a few farms to individually fund these expensive monitoring activities would be challenged as not being reasonably required under section 114. *Id.* Respondents also note that if an AFO did monitor in response to a section 114 request, it would only pay for determining if its emissions exceed regulatory thresholds, which would not be helpful for determining AFO emissions nationwide. *Id.* Additionally, Respondents argue that the use of section 114 will not produce data any quicker than will the Agreements, because AFOs will likely retain consultants who would attempt to construct a baseline of data at each facility, since such data currently do not exist. EPA may not necessarily agree with the consultants' findings, and the AFOs for their part may retain lawyers to contest EPA's monitoring request, adding expenses, time and resources that will delay resolution of the issues. *Id.*

OECA the same deference a reviewing court would provide,[21] we nonetheless recognize that the Agency has broad discretion in choosing how best to bring a facility or group of facilities into compliance and we further recognize OECA's expertise in matters of enforcement strategy.

**C.** *The Penalty Amounts Set Forth in the Agreements Follow the Applicable Statutory Penalty and Appropriately Explain Deviations from EPA's Penalty Policies.*

Finally, the Board asked OECA to explain how the penalty amounts relate to the statutory penalty criteria[22] for each of the

---

[21] In reviewing administrative decisions, federal courts are guided by the doctrine of administrative deference announced by the Supreme Court of the United States in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Under *Chevron*, an agency's interpretation of a statute is entitled to deference if the statute is silent or ambiguous with respect to the specific issue, and the interpretation proffered by the agency is reasonable. This doctrine, however, is not applicable to cases before the Board. *In re Lazarus, Inc.*, 7 E.A.D. 318, 351 n. 55 (EAB 1997) ("parties in cases before the Board may not ordinarily raise the doctrine of administrative deference as grounds for requiring the Board to defer to an interpretation of statutory or regulatory requirements advanced by any individual component of the EPA."). The deference doctrine does not apply during Board review because the Board serves as the final decision maker for the Agency. *See, e.g., In re Ocean State Asbestos Removal, Inc.*, 7 E.A.D. 522, 543 n. 22 (EAB 1998); *In re Mobil Oil Corp.*, 5 E.A.D. 490, 508-509 & n.30 (EAB 1994).

[22] The CAA provides that, in determining the amount of any penalty to be assessed, the Administrator:

> shall take into consideration (in addition to such other factors as justice may require) the size of the

three statutes involved and to explain whether these Agreements implement the applicable penalty policies.

OECA argues that the penalty amounts in the proposed agreements follow the statutory penalty criteria and are generally consistent with the penalty policies. The penalty amounts set forth in the Agreements are scaled, OECA explains, to both the size of farm and the number of farms,[23] and these

---

> business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

CAA § 113(e)(1), 42 U.S.C. § 7413(e)(1). Similarly, CERCLA and EPCRA require that the following elements be taken into consideration:

> the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

CERCLA § 109(a)(3), 42 U.S.C. § 9609(a)(3); EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C).

[23] OECA elaborated on this point during the hearing explaining that "the amount that is assessed for each farm goes up depending on the number of animals housed at the farm. Consequently, respondents who own larger farms or more farms pay more than respondents who own smaller farms or fewer farms." Hearing Transcript at 12.

characteristics relate to size of business, economic impact, ability to pay, and the seriousness or gravity of the violation, because larger farms are more likely to exceed various regulatory thresholds. Supplemental Memorandum at 20; Hearing Transcript at 12-13. OECA also considered the violator's prior history and determined that none of the Respondents has a history of violation related to air emissions from these farms.[24] Supplemental Memorandum at 20; Hearing Transcript at 13. The penalty amounts are below the maximum allowed under the statute, OECA adds, because the Agency recognized the difficulty for the Agency and Respondents in determining AFO emission levels. Such uncertainty creates significant litigation risk in bringing these enforcement actions. Supplemental Memorandum at 21. Finally, OECA notes that it is not possible to determine the economic benefit of the potential violations because of the problems in determining the exact compliance status of individual farms and because the control technologies are unknown. Supplemental Memorandum at 21; Hearing Transcript at 13. Calculation of economic benefit, OECA adds, depends on the identification of a delayed cost or avoided cost[25] but because Best Available Control

---

[24] OECA notes that the application of the CAA, CERCLA, and EPCRA to AFOs is a recent phenomenon. Supplemental Memorandum at 20.

[25] *See EPA's Clean Air Act Stationary Source Civil Penalty Policy* (Oct. 25, 1991) at II.A.1.

Technology and Lowest Achievable Emissions Rate have not been established for AFOs, these costs cannot be determined. Supplemental Memorandum at 22.

As to the use of the applicable penalty policies, OECA notes that the policies use the penalty criteria found in the underlying statutes, which OECA applied. The reduction, OECA adds, reflects the mitigation factors found in the penalty policies such as litigation risk and fairness.[26] Supplemental Memorandum at 22; Hearing Transcript at 13, 37. OECA of necessity deviated from the policies in that it did not use the penalty tables and matrices set forth in the penalty policies due to the lack of current information regarding the specifics of the potential violations. *Id.* at 24.

AIR argues that the Agreements violate the statutory penalty requirements and do not comport with EPA's penalty policies. AIR's Brief at 11. First, AIR argues that the penalties fail to recoup the economic benefit. According to AIR, the Agency should have, at a minimum, recovered $703.00 for each CERCLA and each EPCRA reporting violation (a total of $1406.00 for reporting

---

[26] *See EPA's Clean Air Act Stationary Source Civil Penalty Policy* (Oct. 25, 1991) at III (allowing a penalty to be mitigated based on litigation risks, upon consideration of, *inter alia*, specific facts, equities, evidentiary issues and legal problems pertaining to a particular case).

violations). *Id.* at 13. Also, AIR adds, OECA ignored readily available information approximating the cost of delayed monitoring and failure to install appropriate pollution controls, such as the cost of the monitoring program and EPA's AgStar program.[27] *Id.* Second, AIR argues, the penalties are inconsistent with EPA's penalty policies because OECA failed to make a case-by-case determination or consider the particulars of each facility in its penalty determination. *Id.* at 16-17. While AIR recognizes that EPA has authority to adjust the penalty based upon various factors, AIR argues that OECA failed to properly document its reasons for deviating from the penalty policies. *Id.* at 14.

In its response to AIR's Brief, OECA notes that AIR misapplied the unit cost table in the CERCLA/EPCRA Penalty Policy.[28] OECA's Response to AIR's Brief at n.9. Instead of

---

[27] The AgStar Program is a voluntary program sponsored by the EPA, the Department of Agriculture, and the Department of Energy. The program encourages the use of methane recovery technologies at confined animal feeding operations that manage manure as liquids or slurries to reduce methane emissions while achieving other environmental benefits. *See* http://www.epa.gov/agstar.

According to AIR, the EPA AgStar Program provides cost information on anaerobic digestion for AFOs, which OECA should have used for determining delayed costs of failing to install appropriate pollution controls. AIR's Brief at 13.

[28] Referring to *Final Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA* (Sept. 30, 1999).

$1406.00 for each reporting violation, the CERCLA/EPCRA Penalty Policy suggests an economic benefit of $694.00 for the first unit and $290.00 for each subsequent unit. *Id.* at 15. OECA further notes that the CERCLA/EPCRA Penalty Policy gives EPA discretion to waive assessment of a civil penalty for economic benefit where the economic benefit is less than $5,000.00,[29] and explains that for most Respondents the delayed cost of compliance will be less than the $5,000.00 discretionary limit. *Id.* OECA adds that for those Respondents with enough farms, for which the delay cost may exceed the $5,000.00 limit, the per farm penalty assessment of $500.00 exceeds the $290.00 per unit compliance cost specified in the CERCLA/EPCRA Penalty Policy, and will more than recover any economic benefit of delayed non-compliance with CERCLA and EPCRA. *Id.* at 15-16.

With regard to AIR's argument that OECA should have considered the cost of the monitoring program, OECA's response is that the delayed cost of monitoring is not applicable because none of the Respondents have been issued a section 114 monitoring request, and therefore they are under no legal obligation to

---

[29] *See Final Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA* (Sept. 30, 1999) at 28 ("If the amount of economic benefit of noncompliance is less than or equal to $5,000, EPA, in its discretion may choose to waive or forego seeking of a civil penalty for such economic benefit which has accrued to respondent from its noncompliance.").

either install monitoring equipment or to monitor their emissions. *Id.* at 16. As to AIR's argument that OECA should have considered the cost of installing appropriate pollution controls, OECA reiterates that this is not possible because the need to install pollution controls for each AFO, and what these controls would be, will not be determined until the necessary monitoring methodologies are developed.[30] *Id.* at 16-17.

In essence, the issues before us are whether OECA appropriately deviated from the applicable penalty policies and whether it established penalties consistent with the statutory criteria. We think it did. We note initially that these Agreements address a situation unlike what would be expected in a typical case. The fact that the industry lacks reliable emission factors and scientifically sound and practical protocols for measuring and/or estimating air emissions makes enforcement a

---

[30] As to AIR's suggestion that OECA should have used the costs identified in EPA's Agstar program in determining economic benefit, OECA explains that reliance on these costs is inappropriate. Supplemental Memorandum at 17. OECA provides two reasons. First, OECA points to the voluntary nature of the program, which focuses on the use and/or development of technology to control methane emissions, and notes that the program makes no claims that these mitigation technologies work. Second, OECA notes that methane is not a regulated pollutant under the Clean Air Act. *Id.*

difficult task by greatly increasing the likelihood of litigation, with its attendant costs, delays, and risks.[31]

The two penalty policies applicable to these Agreements, *EPA's Clean Air Act Stationary Source Civil Penalty Policy* (Oct. 25, 1991); *Final Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA* (Sept. 30, 1999), are *guidance* documents devised to assist EPA staff in calculating proposed penalties. While the use of penalty policy documents serves an important purpose in helping assure that penalties are appropriate for the violations committed, and are fairly and consistently assessed, the Agency has the authority to deviate from these policies where the circumstances warrant.[32]

---

[31] As noted earlier, *see supra* note 26, penalties can be mitigated based on the litigation risks associated with a particular case.

[32] The *Final Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA, and Section 103 of CERCLA* (Sept. 30, 1999) provides in pertinent part:

> Although the application of this Policy is intended for typical cases, there may be circumstances that warrant deviation from the Policy. The policies and procedures set forth herein are intended solely for the guidance of employees of the EPA. They are not intended to, nor do they, constitute a rulemaking by the EPA. They may not be relied upon to create right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency reserves the right to act variance with this Policy and to change it at any time without public notice.

*Id.* at 3. *See also EPA's Clean Air Act Stationary Source Civil*

AIR acknowledges that the Agency has this authority. AIR's Brief at 14; Hearing Transcript at 62. To the extent the Agency has deviated from these policies, it has clearly articulated why.[33]

In sum, the distinct problems both AFOs and EPA face when it comes to compliance with and enforcement of the laws pertaining to air emissions for AFOs warrant deviation from the penalty policies in these cases.

We also have considered OECA's rationale in assessing the penalties set forth in the Agreements relative to the statutory criteria, and find it to be sound. OECA considered factors reasonably related to the size of the business, the nature,

---

*Penalty Policy* (Oct. 25, 1991) at I.

[33] Such articulation has been consistent throughout the development and implementation of this initiative. For instance, OECA first explained its decision to deviate from these policies in its response to public comments on the *Notice of Consent Agreement and Final Order, and Request for Public Comment* published in the Federal Register on January 31, 2005. *See* 70 Fed. Reg. 40016, 40019 (July 12, 2005) (*Supplemental Notice; Response to Comments on Consent Agreement and Final Order*). OECA further documented its reasons for deviating from the policies in the supporting documents submitted to the Board as part of the review and ratification process prescribed by 40 C.F.R. § 22.18(b)(3), and elaborated on this topic in its Supplemental Memorandum and at the Hearing. *See* Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (Nov. 4, 2005) at 6-8; Supplemental Memorandum at 19-24; Hearing Transcript at 11-14. We are satisfied with OECA's documentation of its decision to deviate from the penalty policies.

extent and gravity of the potential violations, prior compliance history and other factors required by the statutes. In addition, OECA reasonably adjusted the penalty recognizing that the challenges associated with the lack of reliable emission data and monitoring protocols raised issues of fairness.[34] *See* CAA § 113(e)(1), 42 U.S.C. § 7413(e)(1)(stating that in determining the amount of any penalty to be assessed, the Administrator shall take into consideration, among other factors, such other factors as justice may require); *see also* CERCLA § 109(a)(3), 42 U.S.C. § 9609(a)(3); EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C). We are satisfied that OECA properly considered and applied the applicable statutory penalty criteria in its penalty determination.[35]

---

[34] As OECA noted at the hearing: "it would be unfair to expect these respondents to pay large penalties when it is currently practically impossible for the vast majority of them to determine whether they're in compliance with the Clean Air Act, CERCLA or EPCRA." Hearing Transcript at 14.

[35] We note at this juncture that this finding is based on an independent assessment and review of the matter and not on deference to OECA's penalty determination. In its response to AIR's Brief, OECA claims that its penalty determination is entitled to great deference. OECA's Response to AIR's Brief at 13. This view is mistaken. *See supra* note 21. To the extent that the Board has given deference to penalty determinations by an administrative law judge, *see, e.g., In re CDT Landfill Corp.*, CAA Appeal No. 02-02, slip op. at 42 (EAB, June 5, 2003), 11 E.A.D. __; *In re Titan Wheel Corp.*, 10 E.A.D. 526, 543 (EAB 2002), *In re City of Marshall*, 10 E.A.D. 173, 190-191 (EAB, 2001); *In re B&R Oil Co.*, 8 E.A.D. 39, 63-64 (EAB, 1998), these cases are inapposite here.

## IV. *FINAL ORDER*

For the foregoing reasons, and pursuant to 40 C.F.R. § 22.18(b), the Board hereby issues this Final Order ratifying the Agreements executed by Respondents listed in footnote 1 of this Order and submitted to the Board by Complainant on November 9, 2005. Complainant and Respondent have consented to the entry of this Final Order and have agreed to comply with the Agreement. It is hereby ORDERED that:

1. Respondent shall comply with all the terms of the Agreement, incorporated herein by reference;

2. Nothing in the Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the CAA, CERCLA, and EPCRA.

3. Respondent is hereby assessed a civil penalty in the sum of the amount determined by Paragraph 48 of the Agreement.

4. Respondent shall, within thirty (30) days of the date an executed copy of the Agreement is received by the Respondent, forward a certified check or money order, payable to the United

States Treasurer, in the amount determined by Paragraph 48 of the Agreement to:

U.S. Environmental Protection Agency
(Washington, D.C. Hearing Clerk)
Docket No. [insert Respondent's case docket number]
P.O. Box 360277
Pittsburgh, PA 15251-6277

The check or money order shall bear the notation of the name of the Respondent and the appropriate case docket number. A transmittal letter, indicating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall file a copy of the check and the transmittal letter by mailing the copies to:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
MC 1900L
Washington, D.C. 20460-0001

5. Failure to remit the civil penalty assessed under the Agreement may subject the Respondent to civil action pursuant to section 113 of the CAA, 42 U.S.C. § 7413, section 109 of CERCLA, 42 U.S.C. § 9609, and/or section 325 of EPCRA, 42 U.S.C. § 11045, to collect any unpaid portion of the monies owed, together with the interest, handling charges, enforcement expenses, including

attorney fees and nonpayment penalties set forth in Paragraphs 51 and 52 of the Agreement.

6. With respect to all requirements of the Agreement except for those related to the assessment and payment of penalties in Paragraphs 48-52, failure to comply with these other requirements will void the releases and covenants not to sue granted by the Agreement as provided for in Paragraph 37 of the Agreement.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 1/27/06

By: _____
Edward E. Reich
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Final Order in the matter of Consent Agreements and Proposed Final Orders for Animal Feeding Operations, were sent to the following persons in the manner indicated:

By Interoffice Mail
(and copy by facsimile):

Robert A. Kaplan
Bruce Fergusson
Special Litigation & Projects Division
Office of Civil Enforcement (2248-A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-0010 FAX

By U.S. First Class Mail
(and copy by facsimile):

Richard E. Schwartz
Kirsten L. Nathanson
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C.
202-628-5116 FAX

By U.S. First Class Mail:

Lee Poeppe
P & W Eggs
2313 Hilltop
Anita, Iowa 50020

Steven A. Nichols
MCM Poultry Farm
5611 Peck Road
Arcadia, CA 91006-5851

Mike Osterholt
Water Works
2104 E 300 South
Portland, IN 47371

Kim Wendel
Bob Wendel & Son's Poultry
14830 Cochran Road
New Weston, OH 45348

K-Brand Farms
715 Glen Wild Road
P.O. Box 119
Woodridge, NY 12789

Henningsen Foods, Inc.
Shell Egg Division
851 Third Street
P.O. Box 70
David City, NE 68632

Lennartz Farms
3178 St. Peter Rd.
Ft. Recovery, Ohio 45846

Center Fresh Egg Farm, LLP
546 9th Ave. East
Oskaloosa, Iowa 52577

Steven C. Badgett
Badgett Enterprises LTD
743 Mercer Darke County Line Rd.
Ft. Recovery, OH 45846

Greg B. Nelson
8690 Quail Circle
Manhattan, KS 66502

Fairway Farms
328 Monterey Rd.
Franklin, KY 42134

William Brenton
Brenton Brothers, Inc.
P.O. Box 190
Dalles Center, Iowa 50063-0190

Russell Roe
Roe Farms, Inc.
72368 110th St.
LeRoy, MN 55951

Terry Finnerty
10347 W. SR 26
Dunkirk, IN 47336

Jerry and Ruth Warren
6873 E. 625 N
Union City, IN 47390

Ronald Evans
E & S Swine, Inc.
2492 Mobleys Bridge Rd.
Grimesland, N.C. 27837

Kenneth Carroll
C & C Farms
4201 Hayes Mill Rd.
Godwin, N.C. 28344

Williamson Swine Farms
1325 Lisbon Street
Clinton, N.C. 28328

James A. Zoltenko
RR1, Box 106
Courtland, KS 66939

Kober Farms LLC
8990 Peach Ridge
Sparta, MI 49345

Dated: JAN 27 2006

Annette Duncan
Secretary