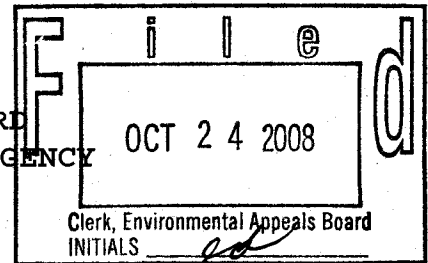


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
Consent Agreements and Proposed ) Consent Agreement and  
Final Orders for Animal Feeding ) Final Order  
Operations ) CAA-HQ-2005-xx  
Operations ) CERCLA-HQ-2005-xx  
Operations ) EPCRA-HQ-2005-xx  
Operations )

ORDER VACATING CONSENT AGREEMENTS AND FINAL ORDERS

I. BACKGROUND

On October 16, 2008, the Environmental Appeals Board ("Board") received a memorandum from the EPA's Office of Enforcement and Compliance Assurance ("OECA", also referred to as "Complainant") requesting, inter alia,<sup>1</sup> to vacate twenty-four of the two thousand six hundred and twenty Consent Agreements ("Agreements") the Board has ratified in the above-captioned matter.<sup>2</sup>

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<sup>1</sup> The same submittal requested that the Board approve a new Agreement, approve changes to forty-one previously ratified Agreements, and transfer six of the Agreements. Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (Oct. 16, 2008). The Board will rule on these requests in separate orders.

<sup>2</sup> As of October 16, 2008, the Board had ratified eight groups of Agreements consisting of two thousand six hundred and twenty Agreements. See Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB Jan. 27, 2006) (ratifying 20 agreements); Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB Apr. 17, 2006) (ratifying 702 agreements); Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB May 5, 2006) (ratifying 286 agreements); Consent  
(continued...)

These 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).<sup>3</sup>

In its memorandum, OECA represents that the following nine Respondents have informed OECA that they either sold or shut down their farms prior to Board approval of their Agreement and that they wish to cancel their Agreement: (1) Mike Menges (Docket No.

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<sup>2</sup>(...continued)  
Agreements and Proposed Final Orders for Animal Feeding Operations (EAB July 19, 2006) (ratifying 1,205 agreements); Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB, Aug. 7, 2006) (ratifying 353 agreements); Consent Agreement and Proposed Final Order for Animal Feeding Operations - Foster Brothers Farm, Inc. (EAB Aug. 17, 2006) (ratifying 1 agreement); Consent Agreement and Proposed Final Order for Animal Feeding Operations - Seaboard Farms LP (EAB Aug. 21, 2006) (ratifying 1 agreement); Consent Agreements and Proposed Final Orders for Animal Feeding Operations (EAB Dec. 16, 2006) (ratifying 52 agreements).

<sup>3</sup> EPA offered 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. See Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 4958 (Jan. 31, 2005); see also Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 40016 (July 12, 2005).

0393); (2) Hillside Ranch (Docket No. 1086); (3) Dilworth Poultry (Docket No. 1143); (4) Sandhill Hog Farm (Docket No. 1671); (5) Boomer Enterprises, LLC (Docket No. 1848); (6) Michael A. Braun (Docket No. 1922); (7) Wade Harrison (Docket No. 2241); (8) Greg Campbell (Docket No. 2249); and (9) Cameo Dairy (Docket No. 2384). OECA agrees that these Agreements should be cancelled and requests that the Board vacate each of these Agreements. OECA also represents that it has determined that the following Agreements were duplicates of previously approved Agreements, and requests that they be vacated as well: (1) Tahoe Farms, LLC (Docket No. 1298) (submitted twice); (2) Balsam Coop (Docket No. 1304) (submitted twice); (3) Elk Run Farms, Inc. (Docket No. 1599) (submitted twice); (4) Dircks Farms, Inc. (Docket No. 1913) (submitted twice); (5) Flagship Farms, LLC (Docket No. 2057) (submitted as a duplicate of 8 other Agreements); (6) Desert Star Dairy (Docket No. 2291) (submitted twice); (7) Sloping Hills Dairy (Docket No. 2390) (submitted twice); and (8) Dan and Peggy Comstock (Docket No. 2713) (submitted twice).

## II. ORDER

Upon consideration of the foregoing, the Board hereby **VACATES** the above-mentioned Agreements and their corresponding Final Orders.

Complainant is ordered to serve each of the above-mentioned Respondents. Complainant shall submit to the Board a certificate of service confirming that such service has been made.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 10/24/08

By: 

Edward E. Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Vacating Agreements and Final Orders 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):

Bernadette Rappold  
Tim Sullivan  
Special Litigation & Projects  
Division  
Office of Civil Enforcement (2248-A)  
U.S. Environmental Protection  
Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

FAX: (202) 564-0010

Dated: **OCT 24 2008**



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Annette Duncan  
Secretary