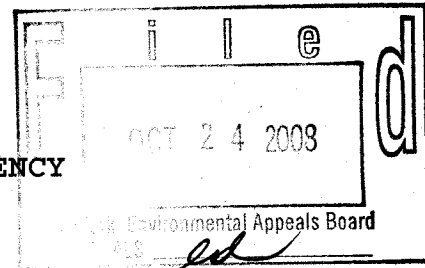


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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

ORDER AMENDING PENALTY AMOUNTS AND
CORRECTING NAMES AND ADDRESSES

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,¹ to approve changes to forty-one of the two thousand six hundred and twenty Consent Agreements ("Agreements") the Board has ratified in the above-captioned matter.²

¹ The same submittal requested that the Board approve a new Agreement, transfer six of the ratified Agreements, and vacate twenty-four 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. Thus, this Order only applies to the forty-one Agreements requiring corrections.

² 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
(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). 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).

²(...continued)
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 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).

Under the model agreement published in the January 31, 2005 Federal Register notice, participating AFOs 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 Final Orders ratifying the two thousand six hundred and twenty Agreements set forth the penalty amounts assessed against each of these Respondents.

In its memorandum, OECA represents that the penalty amounts assessed against twenty-five Respondents were miscalculated.³ OECA explains that the miscalculated penalty amounts were largely caused by incorrect and/or ambiguous information submitted by Respondents. OECA also explains that Respondents providing incorrect or ambiguous information also led OECA to incorrectly caption sixteen Agreements with respect to the Respondents' names and/or addresses.⁴ OECA requests that the Board amend the

³ OECA provided a table identifying the twenty-five Respondents, setting forth the new penalty amounts, and explaining the reasons for the penalty change. See Attachment B (Penalty Correction Table) to Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (Oct. 16, 2008). This attachment has been incorporated into this Order as Attachment 1.

⁴ OECA also provided a table identifying the sixteen Agreements with incorrect captions. See Attachment C (Respondent Name and Address Corrections Table) to Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (Oct. 16, 2008). This attachment has been incorporated into this Order as Attachment 2.

Agreements and Final Orders for these Respondents as provided in Attachments 1 and 2 of this Order.

II. ORDER

Upon consideration of the foregoing, the Board hereby **AMENDS** the penalty amounts of the twenty-five Agreements listed in Attachment 1 of this Order, in the manner indicated in that attachment. The Board also **CORRECTS** the Name and Addresses in the Agreements listed in Attachment 2 of this Order, in the manner this attachment prescribes. The corresponding Final Orders are hereby amended and corrected accordingly.

In addition, the Board orders Complainant to serve, and certify service of this Order to, all the Respondents listed in Attachments 1 and 2.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich

Environmental Appeals Judge

Dated: 10/24/08

Business Confidentiality Asserted¹

Penalty Corrections Table

Docket Number	Respondent Name	Address (and Corrected Name/Respondent if Appropriate)	Old Penalty	New Penalty	Justification
0118	Carolina Bay, LLC	Carolina Bay Ltd. 3807-21 Wrightsville Ave. Wilmington, NC 28403	\$1,000	\$500	Incorrectly assessed a penalty for 1 farm 10x above the large CAFO threshold (hereinafter "threshold") when Respondent has 1 farm above the threshold
0144	I & I Farms	R&M Farms 1034 Fields Rd. Tar Heel, NC 28932	\$500	\$200	Incorrectly assessed a penalty for 1 farm above the threshold when Respondent has 1 farm below the threshold
0175	Kenneth Cox Farms	381 Barbee Rd. Richlands, NC 28574	\$500	\$200	Incorrectly assessed a penalty for 1 farm above the threshold when Respondent has 1 farm below the threshold
0244	Richard Benda	85162 580 th Ave. Jackson, MN 56143	\$500	\$200	Incorrectly assessed a penalty for 1 farm above the threshold when Respondent has 1 farm below the threshold
0261	D & D Farms	4141 Richfield Center Rd. Berkey, OH 43504	\$500	\$200	Incorrectly assessed a penalty for 1 farm above the threshold when Respondent has 1 farm below the threshold
0802	Manning Bros. Dairy	P. O. Box 712 Maybank, TX 75147	\$500	\$200	Incorrectly assessed a penalty for 1 farm above the threshold when Respondent has 1 farm below the threshold
0803	Charles Van Der Kooi Dairy	1563 West Buckingham Dr. Hanford, CA 93230	\$1,500	\$500	Incorrectly assessed a penalty for 1 farm above the threshold and 1 farm 10x above the threshold when Respondent has 1 farm above the threshold
0824	Palla Rosa Farming Co.	Palla Rosa Dairy #3, LP 5555 Houghton Rd. Bakersfield, CA 93313	\$200	\$500	Incorrectly assessed a penalty for 1 farm below the threshold when Respondent has 1 farm above the threshold
0827	J&R Dairy	4403 Bear Mountain Blvd. Bakersfield, CA 93313	\$200	\$500	Incorrectly assessed a penalty for 1 farm below the threshold when Respondent has 1 farm above the threshold

¹ Several Respondents asserted business confidentiality claims over the number of farms covered by their Agreements - this information has been removed from this version of the document

Business Confidentiality Asserted¹

Penalty Corrections Table

Docket Number	Respondent Name	Address (and Corrected Name/Respondent if Appropriate)	Old Penalty	New Penalty	Justification
0866	G3 Dairy	5829 E. Panama Ln. Bakersfield, CA 93307	\$200	\$500	Incorrectly assessed a penalty for 1 farm below the threshold when Respondent has 1 farm above the threshold
0879	West Star Ranch	15914 Legacy Ct. Bakersfield, CA 93314	\$1,000	\$500	Incorrectly assessed a penalty for 1 farm 10x above the large CAFO threshold when Respondent has 1 farm above the threshold
1044	Bear Mountain Dairy	4551 Bear Mountain Blvd. Bakersfield, CA 93313	\$200	\$500	Incorrectly assessed a penalty for 1 farm below the threshold when Respondent has 1 farm above the threshold
1366	Penton Farms	Quality Pork, LLP P.O. Box 152 Algona, IA 50511	\$500	\$1,000	
1581	Heimerl Farms, LTD	3891 Mink Rd. Johnstown, OH 43031	\$1,000	\$200	
1617	Wilhoite Family Farms, LLC	1025 East 375 North Lebanon, IN 46052	\$4,500	\$3,000	
1768	DM Farms of Rose Hill LLC	P.O. Box 566 Nevada, MO 64775	\$8,500	\$9,500	
2180	Hollbrook Farms	1257 St. Rt. 67 Waynesfield, OH 45896	\$200	\$1,000	

¹ Several Respondents asserted business confidentiality claims over the number of farms covered by their Agreements – this information has been removed from this version of the document

Business Confidentiality Asserted¹

Penalty Corrections Table

Docket Number	Respondent Name	Address (and Corrected Name/Respondent if Appropriate)	Old Penalty	New Penalty	Justification
2303	Parmerton Dairy	Leslie's Dairy c/o Martin Alvarez P.O. Box 844 Friona, TX 79305	\$500	\$200	
2551	Copper Farms	4226 Red River W Grove Rd. Arcanum, OH 45304	\$1,000	\$200	Incorrectly assessed a penalty for 2 farms above the threshold when Respondent has 1 farm below the threshold
2553	Doug Veit	11862 County Road 4005 Tebbetts, MO 65080	\$500	\$200	
2565	Donald L. Hershey	Donald C. Hershey 255 Plane Tree Dr. Lancaster, PA 17603	\$1,000	\$2,000	
2634	Rainbow Farms	c/o Doug Heacock 4222 Township Road 114 Cardington, OH 43315	\$500	\$200	
2689	Balsam Coop	1116 250 th St. Rockford, IA 50468	\$1,000	\$500	
2690	Direks Farms Inc.	1380 120 th St. Clarence, IA 52216	\$200	\$2,000	
2729	Starner Farms	P.O. Box 85 Hoffman, MN 56339	\$2,000	\$1,500	

¹ Several Respondents asserted business confidentiality claims over the number of farms covered by their Agreements -- this information has been removed from this version of the document.

Respondent Name and Address Corrections Table

Docket Number	Name Correction	Address Correction	From (Address)	To (Address)	Justification
0118	X	X	Carolina Bay, LLC 2551 Exum Rd. NW Ash, NC 28420	Carolina Bay Ltd. 3807-21 Wrightsville Ave. Wilmington, NC 28403	Respondent's business changed names
0144	X	X	I & I Farms 1015 Fields Rd. Tar Heel, NC 28392	R & M Farms c/o Michael Inman 1034 Fields Rd. Tar Heel, NC 28392 and Kenneth Inman Farms c/o Kenneth Inman 1143 Fields Rd. Tar Heel, NC 28392	I & I (originally owned by three brothers) submitted one Agreement; in December 2006 following EAB approval of the Agreement, one brother left the operation; at that point, the farm was split between the remaining two brothers. Each brother now controls four hog houses on the farm originally covered by the Agreement.
0149	X	X	Premium Standard Farms 623 Southeast Blvd. Clinton, NC 28328	Danny Mitchell 249 Clayton Rd. Princeton, NC 27569	Respondent incorrectly filled out the Agreement in his integrator's name
0542		X	VM Hogs LLC 439 L. Ave. Churdan, IA 50050	VM Hogs LLC c/o Paul Vogel 202 4 th St. Lohrville, IA 51453	
0824	X		Palla Rosa Farming Co. 5555 Houghton Rd. Bakersfield, CA 93313	Palla Rosa Dairy #3, LP 5555 Houghton Rd. Bakersfield, CA 93313	Respondent's business changed names
2000		X	Huling Farm 3020 Oak Ave. Garner, IA 50438-8561	Huling Farm c/o Richard Formanek 1165 270 th St. Brit, IA 50423	
2071		X	Miles Farm, LLC RR 1 Box 2 Marshall, MO 65340	Miles Farm, LLC Rt. 2, Box 17G Marshall, MO 65340	

Respondent Name and Address Corrections Table

Docket Number	Name Correction	Address Correction	From (Address)	To (Address)	Justification
2088		X	Pleasant Pork, LLC 126 Washington Eldora, IA 50627	Pleasant Pork, LLC c/o David McClellan P.O. Box 444 Eldora, IA 50267	
2208	X		Reeves Farm 00196 Amsterdam Rd. Minster, OH 45865	John Bruns 00196 Amsterdam Rd. Minster, OH 45865	Agreement was incorrectly captioned
2318		X	J & J Dairy Development 419 S. Commercial Portales, NM 88130	J & J Dairy Development 42547 U.S. Highway 70 Portales, NM 88130	
2424		X	J & J Dairy 419 S. Commercial Portales, NM 88130	J & J Dairy 42547 U.S. Highway 70 Portales, NM 88130	
2452	X	X	Murphy-Brown P.O. Box 856 Warsaw, NC 28398	Rudy Harrelson Farms c/o Rudy Harrelson 14262 Highway 19 Nichols, SC 29581	Respondent incorrectly filled out the Agreement in his integrator's name
2565	X		Donald L. Hershey 255 Plane Tree Dr. Lancaster, PA 17603	Donald C. Hershey 255 Plane Tree Dr. Lancaster, PA 17603	
2566	X	X	Wenger's Feed Mill Inc. P.O. Box 26 Rheems, PA 17570	Jere L. Hoover 287 Conowingo Rd. Quarryville, PA 17566	Respondent incorrectly filled out the Agreement in his integrator's name
2634		X	Rainbow Farms 1485 State Route 529 Cardington, OH 43315	Rainbow Farms c/o Doug Heacock 4222 Township Road 134 Cardington, OH 43315	
2735		X	Ed Raszkowski 7499 E. 1000 N. Union City, IN 47390	Ed Raszkowski 1622 West Sunset Avenue Union City, IA 47390	

CERTIFICATE OF SERVICE

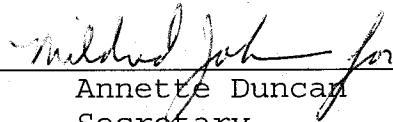
I hereby certify that copies of the foregoing Order Amending Penalty Amounts and Correcting Names and Addresses in the matter of Consent Agreements and Proposed Final Orders for Animal Feeding Operations, were sent to the following persons in the manner indicated:

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



Annette Duncan
Secretary