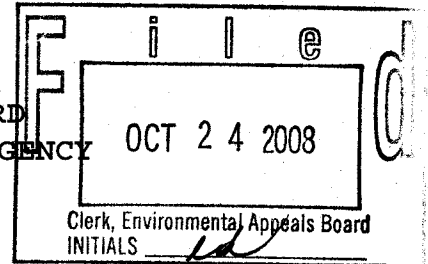


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

ORDER TRANSFERRING RESPONSIBILITY

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> the transferring of responsibility in six 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 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 transfer of six of the ratified Agreements.

<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);

(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).

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<sup>2</sup>(...continued)

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 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.

In its memorandum requesting the transferring of responsibility in six Agreements, OECA represents that: (1) six Respondents informed OECA that they sold their farm(s) after Board approval of their Agreement; (2) OECA contacted the new owners and they confirmed their desire to assume responsibility for these Agreements; (3) the purchasers fully understand the Agreement's responsibilities, including the penalty assessments. See Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to

Environmental Appeals Board (Oct. 16, 2008) at 6. To support these representations, OECA included in its transmittal package signed statements from the purchasers indicating their desire to have the Agreement transferred to them and their understanding of the terms of the Agreement including the penalty associated with the Agreement. *Id.* (Attachment E).

**II. ORDER**

Upon consideration of the foregoing, the Board grants OECA's request to transfer responsibility, and hereby amends the Agreements listed in the table below and their corresponding Final Orders to reflect the following changes:

Docket No.	Respondent	New Owner (assuming responsibility for Agreement)
0163	Clarence D. Bryan	Stanley Craft 669 Cypress Creek Rd. Richlands, NC 28574
1135	Wegmans Food Markets, Inc.	Kreher's Farm Fresh Eggs, LLC (Wayne County Eggs, LLC and Wayne County Farms, LLC) 5411 Davison Rd. Clarence, NY 14031
1366	Penton Farms, Inc.	Quality Pork, LLP P.O. Box 152 Algona, IA 50511
2303	Parmerton Dairy	Leslie's Dairy c/o Martin Alvarez P.O. Box 844 Friona, TX 79305


2320	Sloping Hill Dairy	Sky Country Farms c/o Al Fiske 8503 Oxford Ave. Lubbock, TX 79423
2393	Rio Blanca Dairy	Caprock Dairy c/o David Lawrence 160 County Road 50 Muleshoe, TX 79347

The Board hereby orders Complainant to serve all the Respondents and new owners listed above and submit to the Board a certificate of service confirming such service has been made.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 10/24/08

By:   
Edward E. Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

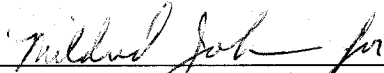
I hereby certify that copies of the foregoing Order Transferring Responsibility in the matter of Consent Agreements and Proposed Final Orders for Animal Feeding Operations, were sent to the following persons in the manner indicated:

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