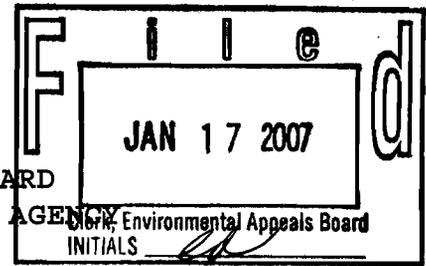


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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 VACATING CONSENT AGREEMENTS AND FINAL ORDERS

I. BACKGROUND

On December 6, 2006, 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 vacate nine of the two thousand five hundred and sixty-eight Consent Agreements ("Agreements") the Board has ratified in the above-captioned matter.²

¹ The same submittal requested that the Board ratify fifty-two other Agreements and approve changes to one hundred and seventy-seven previously ratified Agreements. Memorandum from Granta Y. Nakayama on Consent Agreements and Proposed Final Orders for Animal Feeding Operations to Environmental Appeals Board (December 6, 2006). The Board ratified the fifty-two Agreements in an order dated December 12, 2006, and will rule on the remaining one hundred and seventy-seven Agreements in a separate order.

² As of December 6, 2006, the Board had ratified six groups of Agreements consisting of two thousand five hundred and sixty-eight 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); See Consent Agreements and Proposed Final Orders for Animal Feeding (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).³

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) Lansman Farms LLC (Docket No. 0609); (2) JMC Dairy (Docket No. 1028); (3) Southfork Egg Inc.

²(...continued)
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); see 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).

³ 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).

(Docket No. 1092); (4) Monty Produce Co. (Docket No. 1093); (5) Bruns Poultry Farm (Docket No. 1094); (6) Garber Poultry Farms (Docket No. 1175); (7) RDR Farms, Inc. (Docket No. 2089); (8) Cedar Valley Farms (Docket No. 2230); and (9) Paul Keese, Inc. (Docket No. 2588). OECA agrees that these Agreements should be cancelled and requests that the Board vacate the each of these Agreements.

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: 1/17/07

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):

Robert A. Kaplan
Bruce Fergusson
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: JAN 17 2007



Annette Duncan
Secretary