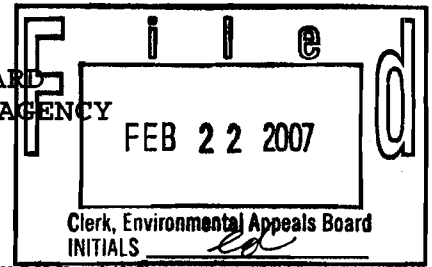


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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

ORDER TRANSFERRING RESPONSIBILITY

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,<sup>1</sup> the transferring of responsibility in six of the two thousand five hundred and sixty-eight Consent Agreements ("Agreements") the Board has ratified in the above-captioned matter.<sup>2</sup>

<sup>1</sup> The same submittal requested that the Board ratify fifty-two other Agreements, approve changes to one hundred and seventy-one previously ratified Agreements, and vacate nine of the 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, vacated the nine Agreements in an order dated January 17, 2007, and approved changes to the one hundred and seventy-one previously ratified Agreements in an order dated January 18, 2007.

<sup>2</sup> 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 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). 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).

Under the model agreement published in the January 31, 2005 Federal Register notice, participating AFOs will pay a civil

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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); 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).

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 represented that six Respondents informed OECA that they sold their farm(s) after Board approval of their Agreement, and that the new owners wish to assume responsibility for the Agreement. OECA also represented that it contacted the new owners and that they expressed interest in assuming responsibility for these Agreements. Finding no supporting documentation in OECA's submittal package corroborating these representations, the Board issued an order directing OECA to provide written confirmation from the new owners showing that they are indeed interested in assuming responsibility. See Order Requesting Supporting Documentation (EAB, Jan. 19, 2007). On February 9, 2007, OECA

complied with the Board's order by submitting the requested documentation. Although the recently submitted documentation evidences the new owners interest in participating in the Agreements, it is not clear from this submittal whether the new owners understood that a penalty is associated with each of these Agreements, and whether they are agreeing to assume responsibility for these penalties. Notwithstanding, the Board finds OECA's submittal acceptable and, as stated below, grants OECA's request, but provides the new owners the opportunity to opt out of the Agreements in the event that they were not aware of the penalties associated to each of these Agreements.<sup>3</sup>

## 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)
0448	Homewood Farms	D&M Farm 28 Dempsey Lane Casa, AR 72025

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<sup>3</sup> OECA's submittals do not indicate whether the penalties have already been paid, mooting this concern.

0487	Conrad Farms	Don Davis 1953 Highway 5 Knoxville, IA 50138 (mailing)  Rural Route 1 Powersville, MO 64672 (site)
0985	Rodney Palla Farms	Palla Rosa Farming Co. 5555 Houghton Road Bakersfield, CA 93313
1662	Schmidt Livestock, Inc.	RW Swine Management 1350 Allen Ave Garner, IA 50438 (mailing)  2165 Apple Ave Ventura, IA 50482(site)
2305	Smith Brothers Farms, Inc.	Nelson Faria 11792 Rd. 12.5 SW Royal City, WA 99375
2399	Hico Property Dairy	Uphill Dairy 910 East FM 219 Hico, TX 76457

Any new owner not interested in assuming responsibility for their Agreement and the penalty associated with it (if not yet paid) may file a motion within 30 days of receipt of this order requesting the Board that this order be vacated as to them.<sup>4</sup>

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<sup>4</sup> Documents that are sent through the U.S. Postal Service (except by Express Mail) must be addressed to the Board's mailing address, which is:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Documents that are hand-carried in person, delivered via courier, mailed by Express Mail, or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) must be delivered to:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board

(continued...)

In addition, the Board 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: 2/22/07

By:   
Edward E. Reich  
Environmental Appeals Judge

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<sup>4</sup>(...continued)  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

Documents are "filed" with the Board on the date they are received by the Clerk.

**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):

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: FEB 22 2007

  
Annette Duncan  
Secretary