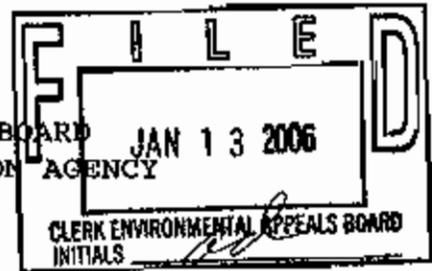


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
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 DIRECTING OECA TO SUBMIT A
REFORMULATED FINAL ORDER

In order for the Board to have a better understanding of OECA's position on the scope of the final orders in the above-captioned matters, the Board hereby directs OECA to submit a reformulated proposed final order consistent with OECA's representations made in its briefs supporting the consent agreements and during the December 13, 2005 hearing.¹ OECA has consistently maintained that the proposed agreements are administrative penalty orders only, and that they do not include any enforceable compliance aspects.² OECA maintains that the only enforceable requirement in the consent agreements is the

¹ See Supplemental Memorandum in Support of the Consent Agreements and Proposed Final Orders for Animal Feeding Operations ("Supplemental Memorandum") at 5-7, 11; Complainant's Brief in Response to the Non-Party Brief Filed on December 20, 2005 by the Association of Irrigated Residents, Et Al ("OECA's Response to AIR's Brief") at 7; Hearing Transcript at 9.

² Supplemental Memorandum at 5; Hearing Transcript at 9, 16-18.

requirement to pay the assessed civil penalty within 30 days of the receipt by Respondents of an executed copy of the consent agreement.³ Other substantive provisions of the order, including all of the provisions relating to the funding and carrying out of the monitoring program, are part of the covenant not to sue that is not intended to be an enforceable part of the order.⁴ However, the structure of the current proposed final order does not clearly reflect this formulation.

When questioned by the Board on this point, OECA has on two occasions offered to submit a revised proposed order that would only cover the enforceable aspects of the agreements. See Supplemental Memorandum at 7 n.4; Hearing Transcript at 18.

The Board believes it would help in its understanding of OECA's position if OECA did submit the proposed reformulation of the proposed final order as it offered to do.⁵ Therefore, the

³OECA's Response to AIR's Brief at 7.

⁴See Supplemental Memorandum at 5, 11; Hearing Transcript at 15-18.

⁵The request in this Order is intended to aid the Board in its understanding of OECA's position and its review of these consent agreements. This Order should not be interpreted to suggest that the Board has made any determination on whether ratification of the consent agreements in any form is appropriate in this case.

Board hereby orders OECA to file a revised proposed final order by no later than Wednesday, January 25, 2006.⁶

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 1/13/06

By: 
Edward E. Reich
Environmental Appeals Judge

⁶Documents are "filed" with the Board on the date they are received.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Directing OECA to Submit a Reformulated Final Order, were sent to the following persons in the manner indicated:

By Interoffice Mail
(and copy by facsimile):

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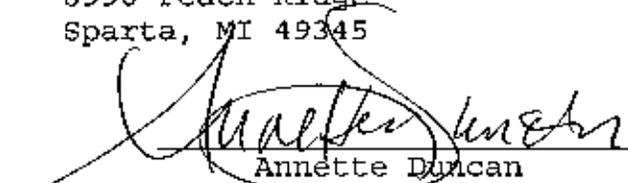
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Dated: JAN 13 2006



Annette Duncan
Secretary