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United States Environmental Protection Agency, Region 9

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Attorneys for Complainant

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

IN THE MATTER OF:)	
)	Docket No. CWA-09-2008-0005
)	
Muranaka Farms, Inc.)	CONSENT AGREEMENT AND
11018 E. Los Angeles Avenue)	PROPOSED FINAL ORDER
Moorpark, California 93021)	(40 C.F.R. § 22.18(b))
)	
Respondent.)	Proceeding Under Section 309(g)(2)(B)
)	of the Clean Water Act, as amended,
_____)	33 U.S.C. § 1319(g)(2)(B)

CONSENT AGREEMENT

Preliminary Statement

The United States Environmental Protection Agency, Region 9 (“EPA” or “Complainant”) initiated these proceedings pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). On September 16, 2008, EPA issued an Administrative Complaint, Findings of Violation, Notice of Proposed Order Assessing a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) to Muranaka Farms, Inc. (“Respondent”). In the Complaint, EPA alleged that Respondent violated Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a), at a property in Moorpark, California.

EPA and Respondent entered into negotiations in an attempt to settle the allegations in the Complaint. This Consent Agreement and Proposed Final Order (“CA/FO”) is the result of those negotiations, and resolves all allegations in the Complaint in a manner that is consistent with the public interest and with the provisions and objectives of the CWA.

General Provisions

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations in the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.
2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.
3. Respondent agrees not to contest the terms and conditions set forth in this CA/FO in this or subsequent proceedings, and agrees not to appeal the Final Order set forth below.
4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.
5. In accordance with 40 C.F.R. § 22.18(c), this CA/FO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in the Complaint. Nothing in this CA/FO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CA/FO or any violation not specifically alleged in the Complaint, including the restoration activities included in the administrative order for compliance issued by EPA to Respondent on November 7, 2007, EPA Docket No. CWA-404-309(a)-08-023.
6. This CA/FO is not a permit and it does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local permit, statute, ordinance, regulation, or order, including but not limited to any CWA requirements, permits, or orders.
7. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311. Respondent and Complainant have been working on the Removal and Restoration Plan to ensure compliance with the Clean Water Act.
8. This CA/FO shall in no way affect the right of EPA or the United States against any third party (person/entity not a party to this CA/FO) or the right of any third party against Respondent. This CA/FO does not create any right in or grant any cause of action to any third party.
9. This CA/FO shall apply to and be binding upon Respondent, its heirs, successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.

10. This CA/FO, inclusive of all attachments, is the entire agreement between the parties to resolve EPA's civil penalty claim against Respondent for the specific CWA violations alleged in the Complaint. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.
11. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and bind Respondent to the terms of the CA/FO.

Penalty

12. Respondent consents to the assessment of and agrees to pay a civil penalty of Seventy Five Thousand Dollars (\$75,000). The penalty was calculated based on the nature, circumstances, extent, and gravity of the violations, Respondent's ability to pay, its prior compliance history, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.
13. Payment of the civil penalty shall be made within thirty (30) days of the effective date of the CA/FO. The date by which payment must be received by the United States shall be the "due date" for the payment. Respondent shall make the payment in accordance with any of the acceptable methods of payment listed in Attachment A, "EPA Region 9 Collection Information," which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attaching a photocopy of the penalty payment, via certified mail to each of the following:

Danielle Carr
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, California 94105

A copy of the check shall be mailed to:

Mary Butterwick
U.S. EPA, Region 9 (WTR-7)
75 Hawthorne Street
San Francisco, California 94105

14. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late-payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date during which time the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 13 above.
15. Failure by Respondent to pay the full penalty when due entitles EPA and the United States to bring a civil action to recover the amount assessed. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In such an action, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees, cost for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), the quarterly nonpayment penalty shall equal twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of that quarter.
16. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any affiliated entity's taxes.

Effective and Termination Dates

17. This CA/FO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk, and shall terminate when Respondent has fully complied with its terms.

CONSENTING PARTIES:

For Muranaka Farms, Inc.

BY: _____

DATE: _____

For the U.S. Environmental Protection Agency, Region 9:

BY: _____

DATE: _____

Alexis Strauss, Director
Water Division
75 Hawthorne Street
San Francisco, CA 94105

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Effective and Termination Dates


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CONSENTING PARTIES:

For Muranaka Farms, Inc.:

BY: _____ DATE: _____

For the U.S. Environmental Protection Agency, Region 9:

BY:  DATE: 12/12/08
Alexis Strauss, Director
Water Division
75 Hawthorne Street
San Francisco, CA 94105

ATTACHMENT A

In the Matter of
Muranaka Farms, Inc.
EPA Docket No. CWA-09-2008-0005

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS TRANSFERS

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency "

CHECK PAYMENTS

If payment is made by check, the check should be made payable to the
"Treasurer, United States of America"

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL:

U.S. Bank
Government Lock Box 979077
U.S. Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-4087

CERTIFICATE OF SERVICE

In the Matter of Muranaka Farms, Inc.
EPA Docket No. 09-2008-0005

I hereby certify that the original of the foregoing Consent Agreement and Proposed Final Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail, return receipt requested, to:

Mr. Tom Larson
Muranaka Farm, Inc.
11018 E. Los Angeles Avenue
Moorpark, CA 93021

Toy R. Fields
Lamb & Kawakami, LLP
333 South Grand Avenue, Suite 4200
Los Angeles, California 90071

12-17-08
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
U.S. EPA, Region 9