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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2012-0151
)	
FIR RIDGE HOLSTEINS FARM, LLC,)	CONSENT AGREEMENT AND
Cloverdale, Oregon)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Fir Ridge

Holsteins Farm, LLC (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, sewage sludge, biological materials, and industrial and municipal waste. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.”

3.2. Respondent is a corporation and thus is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. Respondent operates a dairy located at 37400 Highway 101 South, Cloverdale, Oregon ("Facility"). Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). At all times relevant to this action, Respondent operated the Facility.

3.4. EPA's regulations define "concentrated animal feeding operation" to include, but is not limited to, any "animal feeding operation" that confines more than 200 mature dairy cows and discharges pollutants to waters of the United States through a man-made ditch, flushing system, or similar man-made device. 40 C.F.R. § 122.23(b)(6). An "animal feeding operation" is defined as any lot or facility where "(i) [a]nimals ... have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) [c]rops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 C.F.R. § 122.23(b)(1).

3.5. The State of Oregon has issued the Oregon Confined Animal Feeding Operation NPDES General Permit, NPDES Permit Number 01-2009 ("Permit"). The permit became effective on June 29, 2009 and will expire on May 31, 2014. As defined in the Permit, a confined animal feeding operation includes any "animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 C.F.R. § 122.23." Permit at p.3, definition 4. The Permit authorizes certain discharges of process wastewater from permitted facilities subject to the conditions and limitations in the Permit.

3.6. Permit Condition S2.A prohibits "a permittee ... from discharging manure, litter, or process wastewater to surface waters ... of the state, except as allowed in S2.B and S2.C and provided the discharges allowed by S2.B and S2.C do not cause or contribute to a violation of state water quality standards" Permit at Condition S2.A.

3.7. Permit Condition S2.B prohibits a permitted CAFO “from discharging manure, litter, or process wastewater to surface waters of the state from [a permittee’s] production area, except when:

- (a) Rainfall events cause an overflow of waste management and storage facilities designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the contaminated runoff and direct precipitation from a 25-year, 24-hour rainfall event; and
- (b) The production area is operated in accordance with the applicable inspection, maintenance, recordkeeping, and reporting requirements of this permit.”

Permit at Condition S2.B.

3.8. The Permit defines “process wastewater” as “water directly or indirectly used in the operation of the [facility] for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other ... facilities; Process wastewater ... also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding.”

Permit at p.3, definition 17.

3.9. Process wastewater contains “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.10. The “production area” is defined as “that part of [the facility] that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.” Permit at p.3, definition 18. The barn complex and other parts of the animal confinement area of the Facility constitute the production area of the Facility which was under Respondent’s control at all times relevant to this action.

3.11. The production area drains into an unnamed man-made drainage ditch that is located approximately 560 feet to the northeast of the production area. The unnamed ditch discharges into the Nestucca River which is located approximately 4,186 feet from the production area.

3.12. The Nestucca River flows into Nestucca Bay which flows into the Pacific Ocean. The Pacific Ocean is susceptible to use in interstate or foreign commerce and thus is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United States” within the meaning of 40 C.F.R. § 122.2. Therefore, Nestucca Bay and the Nestucca River are “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are “waters of the United States” within the meaning of 40 C.F.R. § 122.2.

3.13. Respondent’s Facility confines more than 400 mature dairy cows for a total of forty-five (45) days or more in a twelve (12) month period. In addition, as described in Paragraph 3.11 above, Respondent’s Facility discharges through an unnamed man-made ditch to a water of the U.S. Therefore, the Facility is a “concentrated animal feeding operation” as that term is defined in 40 C.F.R. § 122.23(b)(2) and a “confined animal feeding operation” as that term is defined in State law.

3.14. At all times relevant to this action, the Facility had coverage under the Permit and has been assigned NPDES tracking number ORG-01-0510.

3.15. On or about March 5, 2012, the Facility discharged process wastewater to the Nestucca River. The discharge was not caused by a rainfall event that caused the overflow of a facility designed, constructed, operated and maintained to contain all process-generated waste waters plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event. Therefore, the discharge violated Condition S2.B of the Permit and was prohibited by Condition S2.A of the Permit.

3.16. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... have violated any permit condition or limitation ... in a permit issued” pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

IV. CONSENT AGREEMENT

4.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent’s economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees to settle this action in the penalty amount of Seven Thousand Dollars (\$7,000).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3, above, plus all applicable interest in such penalty, within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered via United States mail to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.

1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: FOR FIR RIDGE HOLSTEINS FARM, LLC:

July 5, 2012



SCOTT RUBY
Owner

DATED: FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/16/2012



EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 29th day of August, 2012.


THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Fir Ridge Holsteins Farm LLC, Docket No.:CWA-10-2012-0151**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Weber
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Scott Ruby
Owner
Fir Ridge Holsteins Farm LLC
37955 Fir Ridge Road
Scio, Oregon 97374

DATED this 30th day of August, 2012


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

