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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2014-0008
)	
ESSENTIAL OIL RESEARCH)	
FARM, LLC, d/b/a)	
YOUNG LIVING LAVENDER FARMS,)	CONSENT AGREEMENT AND
St. Maries, Idaho,)	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 redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Sections 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 Essential Oil Research Farm, LLC, d/b/a Young Living Lavender Farms (“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, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is proposed to be assessed.

2.3. EPA and Respondent agree to settle this matter, without a formal hearing, the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter. The parties agree that settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

2.4. Compliance with this CAFO shall resolve the allegations of violations contained herein.

2.5. 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. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as

authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.2. 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.”

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines “pollutant” to include, *inter alia*, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste.

3.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; all other waters of which the use, degradation, or destruction would or could affect interstate or foreign commerce; and tributaries to those waters. 40 C.F.R. § 122.2.

3.5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14) defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit...from which pollutants are or may be discharged.”

3.6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, an individual, corporation, partnership, or association.

3.7. Respondent is a corporation, registered in the State of Idaho, and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.8. At all times relevant to this action, Respondent was the owner and operator of the Young Living Lavender Farms facility (“Facility”), located at 701 North Fork Coon Creek Road,

St. Maries, Idaho. At the Facility, Respondent processes oils from lavender, lemon balm, balsam fir, and Idaho tansy. Oil is extracted by running steam through the vegetation, condensing the vapor from the vegetation steaming process, and then separating the oil from the water. The oil portion is transported to a location outside the Facility for further processing.

3.9. The water used in the distillery process is piped to storage tanks and then pumped to a distillery wastewater storage lagoon located immediately east of the distillery and office buildings. The distillery wastewater storage lagoon can be connected to a lower irrigation pond (“Irrigation Pond”) located immediately west of the distillery and office buildings via a control device and culvert, or it can be isolated. The Irrigation Pond has an overflow tube that directs overflow from the Irrigation Pond into the North Fork Coon Creek.

3.10. The Facility contains a point source or point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

3.11. At all times relevant to this action, Respondent was not authorized to discharge pollutants from the Facility to North Fork Coon Creek.

3.12. North Fork Coon Creek is a tributary to Lake Coeur d’Alene and the Columbia River. The Columbia River and/or Lake Coeur d’Alene are currently used, were used in the past, or may be susceptible to use, in interstate and foreign commerce, and thus North Fork Coon Creek is a “water of the United States” as defined in 40 C.F.R. § 122.2, and a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Count 1: Unpermitted Discharge of Distillery Wastewater

3.13. Respondent does not have a permit to discharge distillery wastewater from the Facility into “navigable water” and “waters of the United States.”

3.14. Contaminated distillery wastewater from the Facility was discharged into North Fork Coon Creek, in January 2012 and February 2012.

3.15. Respondent's discharges of contaminated distillery wastewater into North Fork Coon Creek in January 2012 and February 2012, were not authorized, and therefore, were in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Unpermitted Discharge of Distillery Wastewater from Wastewater Tank Overflow

3.16. Respondent does not have a permit to discharge distillery wastewater from the Facility into "navigable water" and "waters of the United States."

3.17. Contaminated distillery wastewater from the distillery wastewater storage tanks at the Facility overflowed into the distillery floor drain system and into North Fork Coon Creek in January 2013.

3.18. Respondent's discharge of contaminated distillery wastewater into North Fork Coon Creek in January 2013 was not authorized, and therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.19. 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 has violated Section 301 of the CWA, 33 U.S.C. § 1311. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for each violation that occurred after January 12, 2009.

IV. CONSENT AGREEMENT

4.1. For purposes of this CAFO, Respondent admits the jurisdictional allegations contained in Paragraph 3.7 of this CAFO.

4.2. Respondent neither admits nor denies the specific factual or legal allegations contained in Part III of this CAFO, except the jurisdictional allegations contained in Paragraph 3.7.

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 that an appropriate penalty to settle this action is \$30,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 calendar days of the effective date of the Final Order. The Final Order will become effective after the public notice and comment period provided in Paragraph 5.4 and upon filing pursuant to Paragraph 5.5.

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

Chae Park
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 the 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, 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., 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:

12-3-13

FOR YOUNG LIVING LAVENDER FARMS:

Kevin A. Pace CFO

Name:

Title:

DATED:

12-13-13

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



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 the settlement.

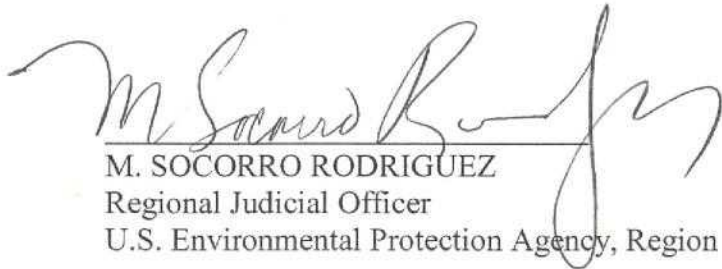
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 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 3rd day of January, 2014.



M. SOCORRO RODRIGUEZ
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 : Essential Oil Research Farm, LLC, d/b/a Young Living Lavender Farms, Docket No.: CWA-10-2014-0008**, 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:

Kris Leefers, Esquire
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:

Matthew C. French
Associate General Counsel
Young Living Essential Oils, LC
3125 Executive Parkway
Lehi, Utah 84043

DATED this 3rd day of January, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10