



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

MAR 10 2010

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2010 MAR 11 PM 2:32  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Article Number: 7005 3110 0000 5937 2333

Lyn Main  
Berkshire Valley Dairy LLC  
P.O. Box 27  
Copake Falls, NY 12517

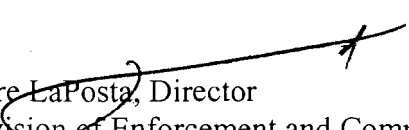
Re: Executed Consent Agreement and Final Order (CAFO)  
Berkshire Valley Dairy, LLC  
NPDES Tracking No. NYA000595  
Docket No. CWA-02-2010-3309

Dear Mr. Main:

Enclosed is an executed Consent Agreement and Final Order (CAFO) which settles the above-referenced Administrative Complaint.

Should you have any questions concerning this matter, please feel free to contact Chris Saporita, Esq. at (212) 637-3203 or by e-mail at [Saporita.Chris@epa.gov](mailto:Saporita.Chris@epa.gov), or Ms. Justine Modigliani, NPDES Team Leader at (212) 637-4268.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosure

cc: Karen Maples, Regional Hearing Clerk (w/ CAFO)  
Leah Ziemba, Nixon Peabody (w/CAFO)  
Chris Saporita, EPA (w/CAFO)  
J. DiMura, NYSDEC (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG-11

2010 MAR 11 PM 2:32

REGIONAL HEARING  
CLERK

**IN THE MATTER OF**

Lynn Main  
Berkshire Valley Dairy, LLC  
533 North Mountain Road  
Copake, New York

**Respondent**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. CWA-02-2010-3309**

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on January 15, 2010 against Respondent, Berkshire Valley Dairy, LLC; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for nine (9) distinct violations of the Clean Water Act, some of which have continued for as long as five (5) years, in the operation of its large dairy concentrated animal feeding operation located at 533 North Mountain Road, in Copake, New York, which have resulted, among other things, in the discharge of agricultural waste into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and § 1342, respectively, and proposes to assess a civil penalty of twelve thousand dollars (\$12,000).
3. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, neither admits nor denies the factual allegations contained in the Complaint, and consents to the terms of this Agreement.

5. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

6. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, EPA has determined that **eight thousand, one hundred dollars (\$8,100)** is an appropriate civil penalty to settle this action.
7. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents, for the purposes of settlement, to the payment of the civil penalty cited in the foregoing paragraph.
8. Not more than thirty (30) days after the date of issuance of the executed CAFO signed by the Regional Judicial Officer of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for eight thousand, one hundred dollars (\$8,100). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

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

Respondent shall also send copies of this payment to each of the following:

Christopher Saporita, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007

9. Payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

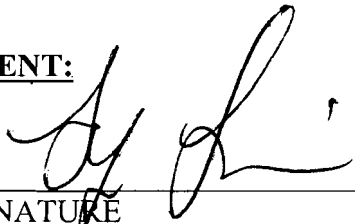
10. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
11. If the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
14. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
15. Each undersigned representative of the parties to this agreement certifies that she or he is fully authorized by the party represented, to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.
16. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
17. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this agreement.
18. Respondent consents to service upon it by delivery of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**RESPONDENT:**

BY:

  
SIGNATURE

2/16/10  
DATE

Lyn Main  
NAME (Please print)

owner Berkshire Valley Dairy LLC  
TITLE (Please print)

**COMPLAINANT:**

  
DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance  
United States Environmental Protection Agency-Region 2  
290 Broadway  
New York, New York 10007

MARCH 5, 2010  
DATE

#### **IV. Final Order**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



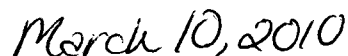
HELEN FERRARA

Regional Judicial Officer

United States Environmental Protection Agency, Region 2

290 Broadway, 16<sup>th</sup> Floor

New York, NY 10007



DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Lyn Main  
Berkshire Valley Dairy, LLC  
533 North Mountain Road  
Copake Falls, New York

**Respondent**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. CWA-02-2010-3309**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addresses below:

Original and One Copy

BY Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th Floor  
New York, New York 10007-1866

Copy by Certified Mail,  
Return Receipt Requested:

Lyn Main  
Berkshire Valley Dairy LLC  
P.O. Box 27  
Copake Falls, NY 12517

Dated: 3/10/10  
New York, New York

  
\_\_\_\_\_