

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY NOV 26 AM 11:32  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
)  
MORAN BEEF, INC., )  
)  
Respondent )  
)  
Proceedings under Section 309(g) of the )  
Clean Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

CONSENT AGREEMENT AND  
FINAL ORDER

Docket No. CWA-07-2010-0080

NOV 26 AM 11:33  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

This proceeding for the assessment of a civil penalty was initiated on or about April 1, 2010, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (Complainant or EPA) issued to Moran Beef, Inc. (Respondent), an Ameded Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with a violation of Sections 301, 308 and/or 402 of the CWA, 33 U.S.C. §§ 1311, 1318 and 1344, and the regulations promulgated thereunder.

The Complaint proposed a civil penalty of \$79,000. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CA/FO) is the result of such negotiations.

**CONSENT AGREEMENT**

1. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.
2. As this is a settlement, Respondent does not admit or deny any fact or liability with respect to the allegations contained in the Complaint referenced above.

3. Respondent consents to the issuance of the Final Order.
4. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.
5. Respondent waives any right to contest the allegations and any right to appeal the proposed Final Order accompanying this CA/FO.
6. Respondent and Complainant each agree to bear their own costs and attorney's fees.
7. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this CA/FO. Respondent reserves the right to defend against such actions on any basis in law or fact.
9. No portion of the civil penalty or interest paid by the Respondent pursuant to the requirements of this CA/FO shall be claimed by the Respondent as a deduction for federal, state, or local income tax purposes.
10. Respondent's failure to pay the civil penalty assessed herein in accordance with the provisions of this CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.
11. Respondent agrees that a failure to submit the penalty payment by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.
12. The undersigned certifies that he is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

**FINAL ORDER**

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(a) and (g) of the CWA, 33 U.S.C. § 1319(a) and (g), it is ORDERED that:

1. Respondent consents to the payment of a civil penalty of \$20,000. Payment is due within thirty (30) days of the effective date of this CA/FO.

2. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury." The checks must be remitted to:

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

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Chris Muehlberger  
Office of Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

#### Parties Bound


3. This CA/FO shall apply to and be binding upon the Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

**Effective Date**

4. This CA/FO shall become effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this CA/FO.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/24/11  
Date

  
Karen A. Flourney  
Acting Director  
Water, Wetlands and Pesticides Division

5.24.11  
Date

  
Chris Muehlberger  
Assistant Regional Counsel

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RESPONDENT:

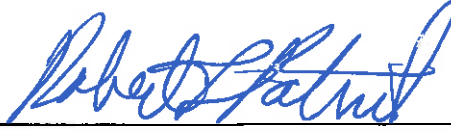
5-9-11  
Date

Frank Moran  
Frank Moran

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IT IS SO ORDERED.

May 26, 2011  
Date

  
Robert L. Patrick  
Regional Judicial Officer

IN THE MATTER OF Moran Beef, Inc., Respondent  
Docket No. CWA-07-2010-0080

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Frank Moran, Assistant Vice President  
Moran Beef, Incorporated  
25794 Magnolia Road  
Underwood, Iowa 51576

Eldon McAfee, Esq.  
Beving, Swanson & Forrest, P.C.  
321 East Walnut Street, Suite 200  
Des Moines, Iowa 50309-2048

Dated: 5/26/11

  
Kathy Robinson  
Hearing Clerk, Region 7