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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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HEARINGS CLERK
EPA -- REGION 10

In the matter of:)	
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)	
Mike Vierstra)	DOCKET NO. CWA-10-2010-0018
d/b/a Vierstra Dairy,)	
)	
Twin Falls, Idaho)	
)	COMPLAINT
)	
Respondent.)	
_____)	

I. AUTHORITY

1.1. This administrative complaint for civil penalties ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated it to the Director, Office of Compliance and Enforcement.

1.2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Mike Vierstra ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. ALLEGATIONS

2.1. Respondent is an individual doing business as Vierstra Dairy. As such, he is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2.2. Respondent operates the Vierstra Dairy ("the Facility"), which is located at 2588 E 3500 N near Twin Falls, Idaho.

2.3. Respondent's Facility contains approximately three corrals, two fenced pens, one milking barn and several wastewater lagoons. Respondent confines and or maintains cattle for a total of 45 days or more in any 12-month period in these corrals, pens and the barn.

2.4. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over any portion of the corrals, pens or the barn in use at the Facility.

2.5. The Facility is an "animal feeding operation" as that phrase is defined in 40 C.F.R. § 122.23(b)(1).

2.6. At the time of the March and June 2009 discharges described below, the Facility confined approximately 1,000 milking cows. Upon information and belief, Respondent has confined more than 1,000 milking cows at the Facility for 45 days or more in the last 12 months.

2.7. The Facility is a "concentrated animal feeding operation" as that phrase is defined in 40 C.F.R. § 122.23(b)(2), and is a "point source" as used in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

2.8. On March 25, 2009, in response to a complaint regarding manure in the Low Line Canal, an employee of the Twin Falls Canal Company ("TFCC") inspected a portion of the Low Line canal located near the Facility. The Low Line Canal is owned by TFCC. During that

inspection the TFCC employee observed dairy wastes flowing in a ditch running from Respondent's Facility into the Low Line Canal. The discharge from the ditch formed a very large pond of waste water in the bottom of the Low Line Canal, which was dry at the time.

2.9. On May 30 and 31, 2009, nearby residents and representatives of the TFCC observed an on-going discharge from the Vierstra Dairy to the Low Line Canal. On June 1, 2009, the Idaho Department of Agriculture inspected the Facility. At the time of the inspection, the Facility was discharging dairy wastes to the Low Line Canal.

2.10. The Low Line Canal flows into the Snake River. The Snake River flows into the Columbia River, which flows into the Pacific Ocean.

2.11. The Low Line Canal is "navigable waters" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" within the meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2. In the alternative, Low Line Canal conveys pollutants from Respondent's Facility to the Snake River, which is a water of the United States.

2.12. Spillage or overflow from animal watering systems, as well as any water that comes into contact with any raw materials, products, or byproducts including manure, litter or feed is "process wastewater" as the term is defined in 40 C.F.R. § 122.23(b)(7). Process wastewater discharged from the Facility is and contains "pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

2.13. The process wastewater discharges described in Paragraphs 2.8-2.9, constituted "discharge[s] of pollutants" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), from a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

2.14. The discharges of pollutants described in Paragraph 2.8 - 2.9, were unauthorized discharges of pollutants to waters of the United States and constitute at least four days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Consequently, pursuant to Section 309(g)(2)(B) of the Act, and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$16,000 per violation for each day during which the violation continues, up to a maximum penalty allowed under 33 U.S.C. § 1319(g).

III. PROPOSED PENALTY

3.1. Based on the foregoing allegations of violation, Complainant hereby proposes that the Presiding Officer assess an administrative penalty against Respondent, for the violations cited above, in the amount not to exceed the statutory maximum penalty allowed under 33 U.S.C. § 1319(g)(2)(B) as amended by the Civil Monetary Penalty Inflation Act, and as reflected in 40 C.F.R. § 19.4.

3.2. The final assessed penalty will take into consideration the nature, circumstances, extent, and gravity of the violation, and, with respect to the Respondent, ability to pay, prior history of violations, degree of culpability, economic benefit and savings resulting from the violation, and other appropriate factors to the extent the information is available for such determinations.

3.3. The nature, circumstances, extent, and gravity of the violations described above are significant. Respondent has approximately 1,000 head of milking cows in his Facility, yet has very poor controls to prevent cattle wastes from entering the nearby Low Line Canal. Respondent's poor management of his wastewater resulted in the discharge of large volumes of manure-contaminated feedlot wastewater to waters of the United States. Such discharges contain significant levels of both fecal coliform and *Escherichia coli* (*E. coli*) bacteria. The presence of these bacteria indicates the possible presence of a number of pathogens (such as *E. coli* 0157:H7 and *Salmonella*) as well as parasites (such as *Cryptosporidium*). Illnesses caused by these microorganisms can result in gastroenteritis, fever, kidney failure, and even death. Animal

wastes are also typically high in nutrients which can cause decreased oxygen levels in receiving waters. These decreased oxygen levels can adversely impact many species of fish indigenous to the Pacific Northwest (including salmon species listed as endangered or threatened under the Endangered Species Act) during their developmental stages as well as at maturity. The Snake River, which is immediately downstream from Respondent's Facility, is listed by the State of Idaho as impaired for excessive nutrients and bacteria.

3.4. By avoiding or delaying the costs associated with implementing waste management controls that would have ensured compliance with the Clean Water Act, Respondent has realized economic benefit as a result of the violations alleged above.

3.5. Respondent has a significant prior history of violations with the Idaho Department of Agriculture involving violations of the Clean Water Act.

3.6. Respondent's culpability is high. Despite a checkered past of compliance with the Clean Water Act, and numerous complaints about poor wastewater control at his facility, Respondent continues to discharge animal wastes to waters of the United States.

3.7. Based on the information available to EPA regarding Respondent's financial condition, Respondent appears able to pay a civil penalty in the range noted above. Should Respondent submit information substantiating an inability to pay this amount, the proposed penalty may be reduced to reflect this inability.

IV. OPPORTUNITY TO REQUEST A HEARING

4.1. Respondent has the right to file an Answer requesting a hearing on any material fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

4.2. Respondent's Answer, including any request for hearing, must be in writing and must be filed with:

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

V. FAILURE TO FILE AN ANSWER

5.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

5.2. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

VI. INFORMAL SETTLEMENT CONFERENCE

6.1. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondent should contact:

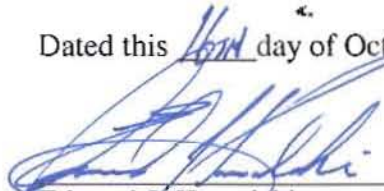
Mark A. Ryan
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1435 N. Orchard St.
Boise, Idaho 83706
(208) 378-5768.

6.2. Note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a hearing.

VII. RESERVATIONS

7.1. Neither assessment nor payment of an administrative civil penalty pursuant to this Complaint shall affect Respondent's continuing obligations to comply with: (1) the Clean Water Act and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33 U.S.C. § 1319(a), concerning the violations alleged herein.

Dated this 16th day of October, 2009



Edward J. Kowalski
Director, Office of Compliance & Enforcement
U.S. EPA Region 10

CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" in the matter of Mike Vierstra d/b/a Vierstra Dairy, Docket No. CWA-10-2010-0018, was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

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

A true and correct copy, together with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R Part 22, by certified mail, return receipt requested:

Mike Vierstra
Vierstra Dairy
2588 East 3500 North
Twin Falls, Idaho 83301

DATED: 10/16, 2009

