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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2013-0065
)	
W/T Land & Cattle, Inc.,)	CONSENT AGREEMENT AND
Caldwell, 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 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 W/T Land & Cattle, Inc., (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.” Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include, *inter alia*, “any . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

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 owns and operates a feedlot located at 24010 Notus Road, Caldwell, Idaho 83607 (Facility).

3.4. An “animal feeding operation” or AFO 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). An AFO that confines more than 1,000 head of beef cattle is a large “concentrated animal feeding operation” or CAFO. 40 C.F.R. § 122.23(b)(4).

3.5. Respondent’s Facility confined more than 1,000 cattle for a total of 45 days or more in a 12 month period at all times relevant to this action prior to May 21, 2011.

Respondent’s CAFO is therefore a point source as defined in 33 U.S.C. § 1362(14).

3.6. On June 3, 2011, Respondent’s facility was photographed with standing water in the pens resulting from flooding of the adjacent Boise River. The Boise River was flowing at 6,900 cubic feet per second (cfs) near Notus on that day.

3.7. Respondent’s facility floods each time the Boise River reaches a flow rate of 6,900 cfs or more near Notus and may flood more frequently. The Boise River reached a flow of 6,900 cfs near Parma and Respondent’s Facility flooded at least 32 times between April 11 and June 3, 2011. The Facility similarly flooded 16 times between April 30 and May 15, 2012.

3.8. Each time Respondent’s Facility floods, it discharges those flood waters back into the Boise River via shallow subsurface groundwater that is hydrologically connected to the Boise River.

3.9. At all relevant times to this action, Respondent’s Facility contained manure wastes. Those manure wastes came into contact and mixed with the flood waters entering the Facility. Those manure wastes discharged to the Boise River along with the floodwaters when the River receded.

3.10. Respondent discharged process wastewater from the CAFO to the Boise River. Process wastewater contains “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.11. Respondent's Facility is not authorized to discharge by an NPDES permit, and all process wastewater discharges from the Facility are unlawful. Therefore the facility discharged process wastewater from the Facility to the Boise River on at least 48 days in violation of section 301(a) the CWA, 33 U.S.C. § 1311(a).

3.12. The Boise River flows into Snake River, which flows into the Columbia River. The Columbia River then flows into the Pacific Ocean. The Boise River, the Snake River, the Columbia River and the Pacific Ocean are all perennial water bodies that are susceptible to use in interstate or foreign commerce and thus are "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

3.13. 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 1311 . . ." 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 Forty Two Thousand Dollars (\$42,000.00).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3, above, plus all applicable interest in such penalty, 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 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 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.

4.8. 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 W/T LAND AND CATTLE, INC.:

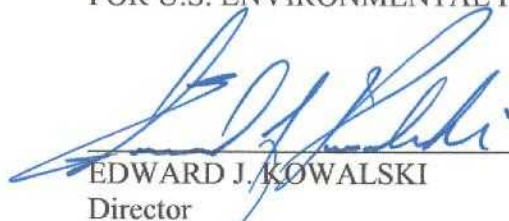
3/29/2013



TODD CHENEY
President
WT Land and Cattle Inc.

DATED: FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/12/2013



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.

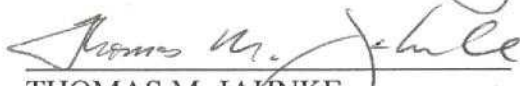
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 17th day of June, 2013.


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 : W/T Land and Cattle, Inc. Docket No.: CWA-10-2013-0065** 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:

Mark Ryan
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:

Todd Cheney
PO Box 209
Notus, Idaho 83656

DATED this 17th day of June, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10