

Faraci Lange
ATTORNEYS

September 23, 2010

Karen Maples
Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2010 SEP 28 P 12:21
REGIONAL HEARING
CLERK

Re: Wilkins Dairy Farm, LLC
Administrative Order CWA-02-2010-3036

Dear Ms. Maples:

Please accept this letter as a response to the Proposed Administrative Compliance Order issued to the Wilkins Dairy (Wilkins), dated May 13, 2010.

Also enclosed is the Answer to the Administrative Complaint. This response addresses by category those items identified in the Administrative Compliance Order (ACO).

Silage Discharge Leachate

Wilkins acknowledges a technical violation of the CAFO general permit relative to the leachate discharge high flow system. The low flow collection system has been in place for some time. Wilkins acknowledges a failure to implement the Comprehensive Nutrient Management Plan (CNMP). With respect to the high flow, however, it is Wilkins' position that they were either misinformed or misunderstood the deadline for compliance. Upon the submission of CNMP to the New York State Department of Environmental Conservation (NYDEC) the identified Best Management Practices (BMP) deadline for completion was explicitly identified as March 31, 2012.

Since the inspection of April 20, 2010, substantial time and expense has been dedicated to complete the leachate discharge system. It is anticipated that the project will be completed no later than October 31, 2010. The project has necessitated numerous permits from both the Town as well as permissions and inspections from fiber-optic cable companies that have cables running in

the area of the excavation. It was also necessary to run discharge pipes under the road, requiring further inspections and permitting. The leachate discharge system is complete and the filter strip has been seeded. Total expenditures to implement this BMP is well in excess of \$30,000.

Bunk Silo

It is necessary to reduce the amount of the silage levels within the bunk silo in order to repair the compromised wall section. All other aspects of the bunk silo have been improved and an Operation and Maintenance (O&M) plan has been implemented. The wall repair is expected to be completed before October 31, 2010. Total cost for remedial work relative to the bunk silo including the development of the O&M plan exceeds \$5,000.

Emergency Action Plan

The emergency action plan was completed within one week of the April 20, 2010 inspection.

Roof Drainage Tiles

The roof water drip trenches project is expected to be completed on or about October 15, 2010. The total cost for implementation of this BMP exceeds \$8,000.

Records Maintenance and Retention

At the time of the inspection on April 20, 2010, all records were in place and properly maintained. Following the inspection, Wilkins reviewed its records, record keeping procedures and protocols with its planner and confirmed the records were complete. Wilkins believes that there was a lack of communication and/or understanding between the inspectors and farm personnel at the time of the inspection relative to record issues.

Manure Spreading

Wilkins believes that the manure spreading calculations of the Agency at the time of the inspection were improperly calculated due to a misunderstanding of field acreage. Manure rates were applied consistently in accordance with the CNMP and based on acreages from consolidated fields. The removal of hedgerows and limited clearing allowed for the consolidation of fields and an increase in total acreage available for planting and spreading. All spreading was done in accordance with the CNMP recommendations and calculations.

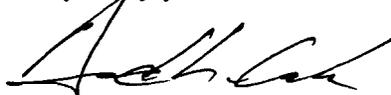
Conclusion

Wilkins is a small operation and simply would not be able to withstand a penalty as assessed by the Agency in the amount of \$65,000. To date Wilkins has spent nearly \$60,000 in order to complete those items identified in the compliance schedule and is on track to complete all such items by October 31, 2010.

Wilkins is willing to consider an administrative settlement short of a hearing, and hereby requests an informal settlement conference in order to pursue settlement discussions. It is important for the Agency to understand that in this economic climate combined with challenging agricultural markets that a fine in the magnitude of \$65,000 as proposed by the Agency would severely cripple the ability of Wilkins Dairy to continue to operate.

We look forward to further communication.

Very truly yours,



David L. Cook, Esq.

DLC/rl

cc: Chris Saporita, Esq.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Scott Wilkins
Wilkins Dairy Farm, LLC
5811 Unionville Road
Bath, NY 14810

ANSWER TO
ADMINISTRATIVE
COMPLAINT

Docket No. CWA-02-2010-3404

NPDES Tracking No. NYA001520

Respondent,

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U. S. C. §119(g).

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 SEP 28 P 12:21
RECEIVED HEARING
CLERK

STATUTORY AND REGULATORY AUTHORITIES

1. Admit
2. Admit
3. Admit
4. Admit
5. Admit
6. Admit
7. Admit
8. Admit
9. Admit

10. Admit

11. Admit

12. Admit

JURISDICTIONAL FINDINGS

13. Admit

14. Admit

15. Admit

16. Admit

17. Admit

FINDINGS OF VIOLATIONS

18. Upon submission of the CNMP to NYSDEC, Wilkins was advised that the deadline for completion of all BMP's was March 31, 2012. Wilkins was progressing towards completion of all BMP's in accordance with NYSDEC instruction. At no time during prior communication and inspections did NYSDEC advise Wilkins of revised BMP compliance deadlines.

(a) Admit that at the time of the inspection in April 20, 2010, the low flow control related to the silage bunk leachate had not been fully implemented. However, the BMP is in process and will be completed subject to the proposed compliance order by October 31, 2010.

(b) Admit that the barn runoff and roof water control had not been fully implemented at the time of the inspection of April 20, 2010. However this BMP will be completed subject to the proposed compliance order before October 31, 2010.

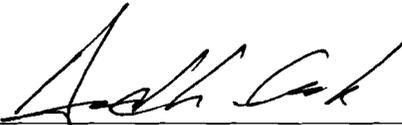
(c) Denied with respect to the application rates on Field C-10. Admit the presence of manure in a roadside ditch adjacent to the field. This resulted from an equipment failure requiring an off-loading of manure with some minor spillage that was immediately cleaned up. Respondent has implemented an emergency action plan relative to such circumstances in accordance with the proposed compliance schedule.

(d) A portion of the silage bunker was previously damaged and is being remediated subject to the proposed compliance schedule.

(e) Denied with respect to an alleged discharge to the surface water of New York State and the waters of the United States.

(f) Denied. All copies of manure application records were present at the time of the inspection and available.

19. Denied



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