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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ESSENTIAL OIL RESEARCH FARM, LLC,
Naples, Idaho,

Respondent.

DOCKET NO. CWA-10-2016-0097

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1 This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308, 309(a)(3) and 309(g)(2)(B) of the Clean Water Act (CWA). CWA §§ 308, 309(a)(3), 309(g)(2)(B), 33 U.S.C. §§ 1318, 1319(a)(3), 1319(g)(2)(B).

1.2 Pursuant to Sections 308, 309(a)(3) and 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1318, 1319(a)(3), and 1319(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 Essential Oil Research Farm, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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 Consent Agreement 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 Respondents are alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1 The CWA prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a permit issued pursuant to the CWA. CWA §§ 301(a), 402, 404, 33 U.S.C. §§ 1311(a), 1342, 1344.

3.1.1 The “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source” and “navigable waters” include “waters of the United States.” CWA § 502(7), (12); 33 U.S.C. § 1362(7), (12).

3.1.2 “Waters of the United States” include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; all other waters of which the use, degradation, or destruction could

affect interstate or foreign commerce; impoundments of, wetlands adjacent to, and tributaries to those waters. 40 C.F.R. §§ 122.2, 230.3(s).

3.1.3 A “point source” includes, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.1.4 A “pollutant” includes dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.1.5 “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land, or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include rock, sand, soil, clay, construction debris, wood chips, overburden from excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

3.1.6 Each discharge of pollutants from a point source that is not authorized by permit issued pursuant to the CWA constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Factual Background

3.2 Respondent is a limited liability company organized under the laws of the State of Utah, and a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.3 Respondent is registered under the laws of the State of Idaho as a foreign limited liability company.

3.4 At all times relevant to this action, Respondent was the owner and operator of the Young Living Highland Flats Tree Farm (Site) at 5060 Mc Arthur Lake Road in Naples, Idaho.

3.5 At the Site, Respondent harvests and chips trees, such as balsam fir, blue spruce, lodgepole pine, ponderosa pine, and western red cedar. A distillery at the Site then extracts natural oils from the wood chips through distillation, condensation, and separation.

3.6 An unnamed stream (Stream) flows through the Site property, flowing from north-northeast to south-southwest, and flows past the east side of the distillery.

3.6.1. Upstream of the Site, downstream of the Site, and within the confines of the Site, the bed of the Stream has signs of scour, hydric soils, a bed and bank, and a visible ordinary high water mark. 33 C.F.R. §§ 328.3(e), 328.4(c).

3.6.2. The Stream is a tributary of Fall Creek, with seasonally intermittent flow, typically discharging into Fall Creek from the middle of fall through late spring.

3.6.3. Fall Creek is a major tributary of Deep Creek, with continuous flow. Fall Creek was measured as 7.4 meters wide in 1998, and 11.6 meters wide in 2001. In June 2014, the Idaho Department of Environmental Quality (IDEQ) developed Total Maximum Daily Load (TMDL) criteria for temperature for Fall Creek.

3.6.4. Deep Creek has a mean annual discharge flow of 336 cubic feet per second, is a navigable water, and is a tributary to the Kootenai River. IDEQ identified Deep Creek as having impaired beneficial uses and developed TMDL criteria for temperature and sediment in Deep Creek. Deep Creek is also designated as critical habitat for Bull Trout (*Salvelinus confluentus*), a federally listed threatened species under the Endangered Species Act.

3.7 The Stream, Fall Creek, Deep Creek, and the Kootenai River are waters of the United States, and are subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

3.8 At the time of the unauthorized activities described below, the Site contained areas with hydric soils and hydrophytic vegetation, which met the criteria for jurisdictional “wetlands” in the 1987 “Federal Manual for Identifying and Delineating Jurisdictional Wetlands.” 33 C.F.R. § 328.3(b), 40 C.F.R. § 230.3(t).

3.9 The Site’s wetland areas relevant to this Consent Agreement are adjacent and hydrologically connected to the Stream, are waters of the United States, and are subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

3.10 In June and July of 2013 and September of 2014, Respondent’s employees used heavy equipment to place “fill material” within a section of the bed and bank of the Stream, for the purpose of constructing a dam to impound water, located to the south of Respondent’s distillery.

3.10.1. The dam filled a section of the bed and bank of the Stream approximately ten feet in width, three feet in depth, and fifty feet in length, with two culverts that penetrate the dam to provide some control of the pond’s maximum water level.

3.10.2. The area just upstream of the dam impounding water is approximately 100 feet in width and 250 feet in length.

3.10.3. The “fill materials” discharged by Respondent within the bed and bank of the Stream are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2

3.10.4. Each piece of heavy equipment used by Respondent to discharge the “fill material” was a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.11 In August 2015, Respondent’s employees used heavy equipment to place “fill material,” in the form of root wads from harvested trees and excess soil associated with those root wads, within the bed and bank of a 150 foot long section of the Stream.

3.11.1. The “fill materials” discharged by Respondent within the bed and bank of the Stream are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2

3.11.2. Each piece of heavy equipment used by Respondent to discharge the “fill material” was a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.12 Respondent did not have a permit issued pursuant to the CWA to discharge any fill material within the bed and bank of the Stream during the years 2013 through 2015.

3.13 **Violation:** Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent discharged fill material from a point source into the waters of the United States without a permit issued pursuant to the CWA.

3.14 Respondent remains in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), each day that the fill material remains within waters of the United States without a permit issued pursuant to the CWA.

3.15 Respondent is liable for administrative penalties in an amount not to exceed \$16,000 per day for each day during which the violation continued, up to a maximum of \$187,500. CWA § 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B); 40 C.F.R. Part 19.

3.16 Respondent has agreed to enter into an Administrative Order on Consent (Consent Order), which will be issued by EPA under the authority of Section 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), for implementation of a Compensatory Mitigation Plan for off-site mitigation, revegetation, monitoring, and reporting.

3.17 Respondent is working with the U.S. Army Corps of Engineers to obtain the appropriate after-the-fact permit for the activities outlined in Paragraphs 3.10 and 3.11, and will coordinate permit application and approval with the development and review of the Compensatory Mitigation Plan pursuant to the Consent Order.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement. Nothing in this Consent Agreement shall be construed as an admission of liability by Respondent.

4.2. ***Prohibition of Discharge.*** Respondents shall not discharge any additional pollutants into any waters of the United States at the Site except in compliance with the Consent Order or a permit issued pursuant to the Clean Water Act.

4.3. ***Penalty.*** 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 that an appropriate penalty to settle the alleged violations is \$16,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Luna.teresa@epa.gov

Yvonne Vallette, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Oregon Operations Office
805 SW Broadway, Suite 500
Portland, OR 97205
Vallette.yvonne@epa.gov

4.7. Except as described in Subparagraph 4.8.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.8. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject 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.

4.8.1 *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.8.2 *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.

4.9. *Federal Tax.* The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order attached to this Consent Agreement.

4.12. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6/20/16

FOR RESPONDENT:



Signature

Matthew C. French, General Counsel
Essential Oil Research Farm, LLC

DATED:

6/27/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

ESSENTIAL OIL RESEARCH FARM, LLC,
Naples, Idaho,

Respondent.

DOCKET NO. CWA-10-2016-0097

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708 provided, however, that this waiver does not impair or prejudice the ability of Respondent to pursue and obtain, including


appeal and review of the process thereof, an after-the-fact permit from the U.S. Army Corps of Engineers.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.6. 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.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 10th day of August, 2016.



M. SOCORRO RODRIGUEZ
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: Essential Oil Research Farm, LLC, Docket No.: CWA-10-2016-0097**, 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:

Christopher Bellovary
U.S. Environmental Protection Agency
1200 Sixth Ave, Ste. 900, M/S ORC-113
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:

Ashley Peck
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101

DATED this 11 day of August, 2016



Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10



Proposed penalty against the Essential Oil Research Farm for Clean Water Act Violations

Description

Pursuant to Section 309(g)(4) of the Clean Water Act (CWA), the EPA is providing public notice of the proposed penalty described below. In order to provide opportunity for public comment, the EPA will not take final action in this proceeding prior to 40 days after publication of this notice.

EPA proposes to enter into Consent Agreements and Final Orders with Essential Oil Research Farm, LLC ("Respondent") for violations of the Clean Water Act at its facility located in Naples, Idaho.

In Docket Number CWA-10-2016-0092, EPA alleges that the Respondent had discharges of industrial wastewater into an unnamed stream without authorization under the Clean Water Act. Respondent has addressed the alleged violations to bring the facility back into compliance with the Clean Water Act. EPA proposes to assess a penalty in the amount of \$162,800, and Respondent agrees to issuance of this Consent Agreement and Final Order.

In Docket Number **CWA-10-2016-0097**, EPA alleges that the Respondent discharged dredged and/or fill material into the waters of the United States without authorization under the Clean Water Act. The discharge filled a section of the bed and bank of an unnamed stream, of approximately ten feet in width, three feet in depth, and fifty feet in length. The discharge created an impoundment of water, affecting an upstream area of approximately 100 feet in width and 250 feet in length. Respondent will work with the Army Corps of Engineers to obtain the appropriate after-the-fact permit, which will be subject to completion of a mitigation project beneficial to the hydrology and aquatic life of the watershed. EPA proposes to assess a penalty in the amount of \$16,000, and Respondent agrees to issuance of this Consent Agreement and Final Order.

These are Class II administrative penalty proceedings, governed by Section 309(g)(2)(B) of the CWA and the procedural rules found at 40 CFR Part 22. The requirements that apply to public comment and participation are set forth in 40 CFR 22.45.

For additional information on Docket No. CWA-10-2016-0092, please contact [Chae Park](mailto:park.chae@epa.gov) (park.chae@epa.gov) at 206-553-1441.

For additional information on Docket No. CWA-10-2016-0097, please contact [Yvonne Vallette](mailto:valette.yvonne@epa.gov) (vallette.yvonne@epa.gov) at 503-326-2716.

Comments Accepted

Persons wishing to comment on the EPA's proposed action or to become participants in this action may do so by submitting their address and telephone number, along with written comments, to the Regional Hearing Clerk at the address below within 30 days of the date of this notice.

Public Notice Summary

Action: Penalty assessment under the Clean Water Act

Date of Notice: June 29, 2016

Comment Period Ends: July 29, 2016

Case Name: Essential Oil Research Farm, LLC

Complaint Docket Number: CWA-10-2016-0092 and **CWA-10-2016-0097**

How to Submit Comments: In accordance with 40 CFR 22.45, anyone wishing to comment on or participate in this proceeding must notify the Regional Hearing Clerk within 30 days of this notice. Please provide your name, complete mailing address, and any comments you have on this action.

Regional Hearing Clerk:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-113)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140
(206) 553-1632

Complainant:

Edward J. Kowalski, Director
Office of compliance and
Enforcement
U.S. Environmental Protection
Agency
Region 10 (OCE-101)

Respondent:

Essential Oil Research Farm, LLC,
5060 McArthur Lake Road, Naples,
Idaho, 83847



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JUN 17 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. John Tippets
Director
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Re: Essential Oil Research Farm, LLC

Dear Mr. Tippets:

This is to advise you of two penalty actions which Region 10 of the U.S. Environmental Protection Agency (EPA) plans to initiate in the state of Idaho. The proposed actions will address alleged violations of the Clean Water Act at the Essential Oil Research Farm, LLC, located at 5060 McArthur Lake Road, Naples, Idaho.

Please consider this an opportunity to provide EPA Region 10 with any comments the Idaho Department of Environmental Quality may have regarding these actions. A copy of the public notice for these penalty actions will be made available at <http://yosemite.epa.gov/r10/enforce.NSF>.

Any comments or questions you may have regarding Docket Number CWA-10-2016-0092 may be directed to Chae Park, of my staff, at (206) 553-1441 or park.chae@epa.gov. Any comments or questions you may have regarding Docket Number CWA-10-2016-0097 may be directed to Yvonne Vallette, of my staff, at (503) 326-2716 or vallette.yvonne@epa.gov. Thank you for your assistance in these matters.

Sincerely,

Edward J. Kowalski
Director

cc: Daniel Redline
Idaho Department of Environmental Quality
Coeur d'Alene Regional Office