



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 22 2008

CERTIFIED MAIL 7007-2680-0001-3546-5133  
RETURN RECEIPT REQUESTED

Ms. Hallie Meushaw  
Troutman Sanders, LLP  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, Georgia 30308-2216

Re: Consent Agreements and Final Orders  
Docket No. CWA-04-2008-4537(b), St. John, U.L.C. and Piedmont Dairy of Georgia,  
Inc., Highbrighton Dairy  
Docket No. CWA-04-2008-4538(b), St. John, L.L.C. and Barrington Dairies, Inc,  
Barrington Dairy

Dear Ms. Meushaw:

Enclosed please find a fully executed copies of the Consent Agreements and Final Orders which has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Lisa Ann McKinley, Environmental Scientist at (404) 562-9403.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Stewart".

James D. Giattina  
Director  
Water Management Division

Enclosure

cc: Georgia Department of Environmental  
Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
ST. JOHN, L.L.C. ) **CONSENT AGREEMENT AND**  
 ) **FINAL ORDER**  
and )  
BARRINGTON DAIRIES, INC. )  
BARRINGTON DAIRY )  
MONTEZUMA, GEORGIA )  
 )  
RESPONDENT. ) **DOCKET NO. CWA-04-2008-4538(b)**

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**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division of EPA, Region 4 ("Complainant").

**II. Allegations**

3. At all times relevant to this action, St. John, L.L.C. and Barrington Dairies, Inc. ("Respondents"), was a limited liability company and a corporation, respectively, duly organized and existing under the laws of the State of Georgia and therefore each is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a concentrated animal feeding operation ("CAFO") known as Barrington Dairy ("Facility") located at 500 Progressive Road, Montezuma, Macon County, Georgia.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National

Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. EPA has granted the State of Georgia through the Department of Natural Resources Environmental Protection Division (“GEPD”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA. GEPD has entered into a Memorandum of Understanding with the Georgia Department of Agriculture (“GDOA”) which grants GDOA authority to inspect CAFOs and perform related regulatory tasks.

7. The GEPD issued the *National Pollution Discharge Elimination System (NPDES) Animal (Non-Swine) Feeding Operations – More Than 1000 Animal Units*, General Permit No. GAG930000 (“Permit”) in accordance with the Georgia Water Control Act of 1964, as amended, the State of Georgia Rules and Regulations for Water Quality Control Chapter 391-3-6-.21, and the CWA. The Permit was effective June 13, 2002, and had expiration date of April 30, 2007. The Permit has been administratively extended until a new permit is issued.

8. The Permit is a Georgia statewide NPDES general permit governing CAFO point source discharges associated with CAFOs with more than 1,000 animal units.

9. Respondents submitted a Notice of Intent (NOI) to be covered under the Permit, and GEPD granted coverage under the Permit and approved the comprehensive nutrient management plan (“CNMP”) on August 21, 2003.

10. Part III.A Table III.A.1 of the Permit requires the Respondents to “[p]rovide and maintain buffer strips or other equivalent practices near feedlots, manure storage areas, and land application areas that are sufficient to minimize discharge of pollutants to waters of the United States (e.g., soil erosion and manure and wastewater). These practices may include but are not limited to residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, forested riparian buffers, terracing, and diversion.”

11. Part III.A Table III.A.7 of the Permit requires the Respondents to “[d]ocument the date, rate, location, type of crops, and methods used for application of manure and wastewater as well as other nutrients to land under the control of the AFO or CAFO owner.”

12. Part III.A Table III.A.7 of the Permit requires the Respondents to “[r]ecord the results of manure and wastewater sampling to determine nutrient content in accordance with Part VII., State of Georgia Specific Permit Conditions. Record the results of representative soil sampling and analyses conducted in accordance with Part VII., State of Georgia Specific Permit Conditions to determine nutrient content.”

13. Part IV.C Table IV.C of the Permit requires the Respondents to “[s]ample waste and wastewater to determine the available nutrient content (Total Kjeldahl Nitrogen and Nitrate Nitrogen)” in accordance with Part VII. Part VII.A.1 of the Permit requires “semiannual (2/year)

and annual monitoring. Semiannual monitoring shall be performed on or before the last day of June and December of each year. Annual monitoring shall be performed on or before the last day of June of each year.” Part VII. B.1 of the Permit requires semi-annual monitoring of Total Kjeldahl Nitrogen (“TKN”) and Nitrate Nitrogen (“NO<sub>3</sub>-N”)

14. Part III.A Table III.A.9 of the Permit requires the Respondents to “[l]and apply manure and/or wastewater in accordance with proper agricultural practices. Land apply manure and/or wastewater in accordance with land application rates developed on a site-specific basis as need to protect water quality. At a minimum, land application rates should (1) prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and minimize water pollution; and (2) be quantified and based on the most appropriate nutrient in the soil, type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater.”

15. Part III.B.1 of the Permit requires the Respondents to “develop and implement a site-specific CNMP that includes the following elements as appropriate to the needs and circumstances of the permitted facility: animal outputs, manure handling and storage, land application of manure and wastewater, site management, record keeping, and other manure utilization options. ... The CNMP must be developed and implemented to meet all of the minimum standards identified in Section A of this Part to protect water quality that are applicable to the permitted facility. The CNMP must be designed and implemented to meet the requirements of the Act.”

16. Part III.B.3 of the Permit requires “[a] current copy of the CNMP shall be kept on site in accordance with Part V.C.3 (Retention of Records) of this permit and provided to the Division upon request. Part V.C.3 of the Permit also requires that “[t]he permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application.”

17. Part III.B. 5 of the Permit requires that the Respondents “must amend the CNMP whenever: (1) the facility makes a substantive change in how it manages its operations, including the location, method, timing or frequency of land application; or (2) a discharge occurs in violation of this NPDES permit. ... The facility should complete an annual review of the CNMP to assess its adequacy in protecting water quality.”

18. Part V.B.3 of the Permit requires the Respondents to “at all times, properly operate and maintain all facilities and systems of treatment and control (and related appearances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”

19. On March 7, 2007, representatives of EPA, GEPD, and the GDOA conducted a Compliance Evaluation Inspection (“CEI”) at the Facility. The CEI was to evaluate the Facility’s compliance with the treatment and disposal of wastewater in accordance with the

CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.23, and the Permit.

20. For purposes of the remainder of Section II. Allegations, the term “manure” will be used to refer to animal waste in solid or liquid form or any substance that contains animal waste.

21. As a result of the CEI, EPA has determined that Respondents have violated the terms of the Permit and CNMP, which is part of the Permit.

22. During the CEI and subsequent review of the records, EPA inspectors observed the following:

A. In 2003, 2004, 2005, and 2006, manure failed to be land applied at proper agronomic rates for nutrients from manure as required by Part III.A Table III.A.9 of the Permit. Manure was land applied to Pivot 5 which was prohibited by the approved CNMP due to high levels of phosphorus in this field.

B. In 2005, manure and commercial fertilizer failed to be land applied at proper agronomic rates for nutrients as required by Part III.A Table III.A.9 of the Permit. Manure and commercial fertilizer were land applied in excess of the agronomic rate for nutrients of 470 lbs-N/acre/yr as described in the approved CNMP, which is part of the Permit, for the following land application fields:

| Field Name          | Pounds of Total Nitrogen Land Applied Exceeding the Agronomic Rate |
|---------------------|--|
| Pivot 3 (180 acres) | 399.36   |
| Pivot 4 (78 acres)  | 417.28   |
| Pivot 5 (210 acres) | 499.15   |
| Pivot 7 (139 acres) | 562.34   |
| Pivot 8 (156 acres) | 166.25   |
| Pivot 9 (260 acres) | 169.64   |
| Pivot 12 (40 acres) | 472.73   |

C. In 2004, the CNMP for the Facility failed to be amended when substantive changes were made to how the Facility’s operations were managed pertaining to land application of manure as required by Part III.B.5. Pivot 10 was renamed “Pivot 11” and Pivot 11 was renamed “Pivot 12.” The new Pivot 12 was used for the land application of manure, but was not included as a field for such use in the CNMP.

D. The semiannual monitoring of Total Kjeldahl Nitrogen and Nitrate Nitrogen in the wastewater failed to be conducted for the following monitoring periods: January - June 2003, January - June 2004, July - December 2005, and January - June 2006, as required by Part IV.C Table IV.C and Part VII.A.1 and B.1 of the Permit.

E. In 2003, 2004, 2005, and 2006, the buffer strips in Pivots 3, 4, 6, 7, 8, and

9 failed to be maintained as an area where manure was prohibited from land application to minimize the discharge of pollutants to waters of the United States as required by Part III.A Table III.A.1 of the Permit and the CNMP, which is also part of the Permit.

F. In 2003, 2004, 2005, and 2006, Respondents failed to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which were used by Respondents to achieve compliance with the conditions of the Permit.

23. Therefore, Respondents violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by failing to comply with Part III.A Table III.A.1, Part III.A Table III.A.9, III.B. 5, Part IV.C Table IV.C, Part V.C.3, and Part VII.A.1 and B.1 of the Permit and the CNMP, which is part of the Permit.

### **III. Stipulations and Findings**

24. Complainant and Respondents have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

25. For the purposes of this CA/FO, Respondents admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

26. Respondents hereby waive their right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondents consent to the assessment of and agree to pay the civil penalty as set forth in this CA/FO and consents to the other conditions, including the performance of the Supplemental Environmental Project (“SEP”), as set forth in this CA/FO.

28. By signing this CA/FO, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

29. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondents was materially false or inaccurate at the time such information or certification was provided to EPA.

30. Complainant and Respondents agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

31. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that one hundred ten thousand Dollars (\$110,000.00) is an appropriate civil penalty to settle this action.

32. Respondents shall submit payment of the penalty specified in the preceding paragraph via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondents and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

Respondents may also submit payment of the penalty in accordance with any of the alternative methods identified in the Attachment to this CA/FO.

33. At the time of payment, Respondents shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
Water Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960.

34. Defendants shall remit payment to the United States, as required by paragraphs 31 – 33, along with all accrued interest as directed by Paragraph 36 below, according to the following penalty payment schedule:

A. No later than thirty (30) days following the effective date of this CA/FO, the amount of \$55,000 shall be remitted; and

B. No later than one (1) year following the effective date of this CA/FO, the amount of \$55,000, and all accrued interest on the outstanding balance of the penalty through to the date of such payment.

35. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

36. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 *et seq.*, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

37. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, 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 twenty percent (20%) of the aggregate amount of such penalty and any nonpayment penalty which is unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

#### **V. Supplemental Environmental Projects**

38. Respondents shall complete the Supplemental Environmental Project ("SEP") described in Appendix B in accordance with the schedule included therein.

39. The total expenditure for the SEP in Appendix B shall not be less seventy-seven thousand nine hundred seventy dollars (\$77,970.00). Respondents shall include documentation of the expenditures made in connection with each SEP as part of the SEP Completion Report.

40. SEP Implementation.

A. Within thirty (30) days of entry of this CA/FO, Respondents shall begin implementation of the SEP as described in Appendix B.

i) This SEP consists of conducting a total of five (5) compliance promotion activities consisting of three (3) workshops in the Southeast and two (2) field day trainings in the Southeast for dairy farmers that use center pivot irrigation systems to land apply manure. Two of the workshops and one of the field days will be held in Georgia and the remaining activities will be held another location in the Southeast to be determined. The



objective of this SEP is to educate the agricultural community about how to improve practices at dairy farms with the goal of preventing pollution, improving surface water quality, and complying with the Clean Water Act.

41. Training Materials.

A. The training materials to be used for the educational workshops and field training events as a part of this SEP shall not be inconsistent with the CWA or its implementing regulations or any other federal, state, or local law or regulation.

B. Respondent shall submit to EPA for review and approval within sixty (60) days after the effective date of this CA/FO, all training materials that Respondent intends to use for the educational workshops and field training events as a part of this SEP. Failure by Respondent to submit the training materials to EPA in accordance with the timeframe specified in the paragraph may subject Respondent to stipulated penalties as specified in paragraph 48.E.iii of this CA/FO.

C. Upon review of such training materials, EPA may (1) approve, in whole or in part, or (2) provide comments to Respondent. Upon receipt of EPA's comments, Respondent shall have thirty (30) days to revise and resubmit the training materials for review and approval. Upon resubmittal, EPA may (1) approve, or (2) disapprove and provide additional comments to Respondent. Upon receipt of EPA's additional comments, Respondent shall have fifteen (15) days to revise and resubmit the training material for review and approval. Upon such resubmittal, if the training materials are disapproved, then EPA may deem Respondent to be out of compliance with this CA/FO for failure to satisfactorily complete the SEP and may assess stipulated penalties pursuant to paragraph 48.A of this CA/FO.

D. EPA, by its consent to the performance of this SEP or its approval of the training materials produced by Respondent for the performance of this SEP, does not warrant or aver in any manner that: (i) attendance by the regulated agricultural community at any educational workshop or field training event conducted as a part of this SEP; or (ii) adherence to any education materials distributed at any such educational workshop or field training event will necessarily result in compliance with the provisions of the CWA, applicable permits (including NPDES permits), applicable local laws, and regulations promulgated thereunder. Notwithstanding review or approval by EPA of the training materials produced by Respondent for the performance of this SEP, Respondent and other members of the regulated agricultural community shall remain solely responsible for its respective noncompliance with the CWA, all applicable permits (including NPDES permits), applicable local laws, and regulations promulgated thereunder. Respondent agrees that all educational workshops and field training events shall include a verbal disclaimer, and all training materials produced for the performance of this SEP shall contain a written disclaimer, consistent with the preceding sentence.

42. SEP Reports.

A. Within sixty (60) days of entry of this CA/FO, and every ninety (90) days thereafter until the SEP Completion Report is submitted, Respondents shall provide Quarterly Reports to EPA on the status of the SEP. The Quarterly Reports shall be submitted to the EPA contact listed in subparagraph E below.

B. Within twenty-four (24) months of the effective date of this CA/FO, Respondents shall submit a SEP Completion Report to EPA for the SEP in the Appendix, certifying that the SEP funds have been applied to the SEP, how the funds were used, an evaluation of the SEP's success, and a certification that the SEP has been completed in accordance with this CA/FO and the Appendix. The Reports shall be submitted to the EPA contact listed in subparagraph E below.

C. The SEP Completion Report shall contain the following information: (i) a detailed description of the SEP as implemented; (ii) a description of any operating problems encountered and the solutions thereto; (iii) itemized costs; (iv) certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and (v) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

D. Respondents agree that failure to submit the SEP Completion Report or any Quarterly Report required by subsections A and B above shall be deemed a violation of this CA/FO and Respondents shall become liable for stipulated penalties pursuant to Paragraph 48 below.

E. Respondent shall submit all notices and reports required by this CA/FO by certified mail to:

Mr. Douglas F. Mundrick, P.E., Chief  
ATTN: Mr. Don Joe  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9751.

F. In itemizing its costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, receipts and other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

43. Respondents hereby certify that, as of the date of this CA/FO, Respondents are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are the Respondents required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondents further certify that they have not received, and are not presently negotiating to receive, credit in any other enforcement action for either SEP.

44. Respondents agree that EPA may attend any of compliance promotion activities in order to confirm that the SEP in Appendix B is being undertaken in conformity with the representations made herein.

45. Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven (7) days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

46. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing either SEP.

47. EPA Review and Acceptance of the SEP Completion Report

A. After receipt of the SEP Completion Report described in Paragraph 42.B above, EPA will notify the Respondents, in writing, regarding: i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondents to correct any deficiencies; or (ii) indicate that EPA concludes that the SEP has been completed satisfactorily or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 45 herein.

B. If EPA elects to exercise option (i) above, *i.e.*, if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondents the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days

from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondents, which decision shall be final and binding upon Respondents. Respondents agree to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondents to EPA in accordance with Paragraph 48 herein.

48. Stipulated Penalties. In the event that Respondents fail to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in the Appendix, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described above, and/or the actual expenditures for the SEP were not applied as described in the Appendix, Respondents shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph B immediately below, for a SEP that has not been completed satisfactorily pursuant to this CA/FO, Respondents shall pay a stipulated penalty to the United States in the amount of \$29,500.00.

B. If the SEP is not completed satisfactorily in accordance with Appendix B, but the Complainant determines that the Respondents: a) made good faith and timely efforts to complete the project; and b) certify, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP as described in the Appendix, Respondents shall not be liable for any stipulated penalty under this paragraph.

C. If the SEP is completed satisfactorily in accordance with Appendix B, but the Respondents spent less than 90 percent of the amount of money required to be spent for the project, Respondents shall pay a stipulated penalty to the United States in a dollar amount equal to the difference of the amount spent and \$77,970.00.

D. If the SEP is completed satisfactorily in accordance with Appendix B, and the Respondents spent at least 90 percent of the amount of money required to be spent for the project, Respondents shall not be liable for any stipulated penalty under this paragraph, and shall be deemed to have satisfied Paragraph 47.

E. For the failure to submit any of the Reports required by Paragraph 42 above, Respondents shall be liable for stipulated penalties as follows:

(i) For the failure to submit a Quarterly Report required by Paragraph 42.A above, Respondents shall pay a stipulated penalty in the amount of \$150.00 for each day after the report was originally due until the report is submitted.

(ii) For the failure to submit the SEP Completion Report required by Paragraph 42.B above, Respondents shall pay a stipulated penalty in the amount of \$300.00 for each day after twenty-four (24) months from the effective date until the report is submitted.

(iii) For the failure to timely submit the training materials required to be submitted pursuant to Paragraph 41.B. (above), Respondents shall pay a stipulated penalty in the amount of \$150.00 for each day after the training materials were originally due until the training materials are submitted.

F. Stipulated penalties for subparagraphs (E) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

G. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with provisions of Paragraphs 32 and 33 above. Stipulated penalties shall not be deductible for purposes of federal taxes. Interest and late charges shall be paid as stated in Paragraph 50 herein.

H. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

49. The determination of whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

50. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 *et seq.*, if EPA does not receive payment of the stipulated penalty demanded pursuant to Paragraph 48 in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

51. Any public statement, oral or written, in print, film, or other media, made by Respondents making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342."

52. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondents in connection with the SEP undertaken pursuant to this Agreement.

## **VI. General Provisions**

53. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

54. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondents' violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondents' violation of any federal or state statute, regulation or permit.

55. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondents of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondents, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondents for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

56. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

57. This CA/FO applies to and is binding upon Respondents and its officers, directors, employees, agents, successors and assigns.

58. Any change in the legal status of Respondents, including but not limited to any transfer of assets of real or personal property, shall not alter Respondents' responsibilities under this CA/FO.

59. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

60. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding:

For Complainant:

Laurie D. Dubriel  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9574

For Respondents:

Ron St. John  
St. John L.L.C.  
4951 N.W. 170<sup>th</sup> Street  
Trenton, FL 32693  
(352) 463-6613

Ron St. John  
Barrington Dairies, Inc.  
4951 N.W. 170<sup>th</sup> Street  
Trenton, FL 32693  
(352) 463-6613

61. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.


62. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

**VII. Effective Date**

63. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

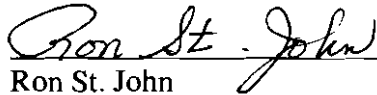
**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
James D. Giattina, Director  
Water Management Division  
U.S. EPA Region 4

Date: 8/15/08

**For RESPONDENT, ST. JOHN, L.L.C. and BARRINGTON DAIRIES, INC.:**

  
\_\_\_\_\_  
Ron St. John  
Managing Partner

Date: 8-13-08



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

|                                 |   |                                       |
|---------------------------------|---|---------------------------------------|
| <b>IN THE MATTER OF:</b>        | ) |                                       |
|                                 | ) | <b>CONSENT AGREEMENT AND</b>          |
| <b>ST. JOHN, L.L.C.</b>         | ) | <b>FINAL ORDER</b>                    |
| <b>and</b>                      | ) |                                       |
| <b>BARRINGTON DAIRIES, INC.</b> | ) |                                       |
| <b>BARRINGTON DAIRY</b>         | ) |                                       |
| <b>MONTEZUMA, GEORGAIA</b>      | ) |                                       |
|                                 | ) |                                       |
| <b>RESPONDENT.</b>              | ) | <b>DOCKET NO. CWA-04-2008-4538(b)</b> |

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**CONSENT AGREEMENT**

**APPENDIX A**

Pursuant to Paragraph 32, Respondents may submit payment of the penalty by any of the following alternative methods:

|  |
|--|
| <b>WIRE TRANSFERS (any currency)</b>   |
| Wire Transfers:<br><br>Federal Reserve Bank of New York<br>ABA: 021030004<br>Account Number: 68010727<br>SWIFT address: FRNYUS33<br><br>33 Liberty Street<br>New York NY 10045<br>Field Tag 4200 of the Fedwire message should read: "D<br>68010727 Environmental Protection Agency" |
| <b>ACH (also known as REX or remittance express)</b><br>Automated Clearinghouse (ACH) for receiving US currency  |
| ACH Transactions:<br><br>PNC Bank<br>ABA: 051036706<br>Account Number: 310006<br>CTX Format Transaction Code 22 - checking<br><br>Environmental Protection Agency<br>808 17 <sup>th</sup> Street NW<br>Washington, DC 20074<br><br>Contact: Jesse White, 301-887-6548                |

**CHECK PAYMENTS**  
**(Use appropriate address for situation)**

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

**US checks in US dollar sent by Fed Ex and other non-US-Postal-Service express mail**

**Federal Express, Airborne, etc.**

U.S. Bank  
Government Lockbox 979077  
**US EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

**On-Line Payments**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

**WWW.PAY.GOV**  
Enter sfo 1.1 in the search field

Open form and complete required fields.



Name of Project: St. John, L.L.C.'s Compliance Promotion for the Agricultural Industry

SEP Project Category: Compliance Promotion

Timeline: Completion within twenty-four (24) months of effective date of CA/FO

Estimated Cost: \$77,970

| <b>Budget</b>                           |                 |
|---|-----------------|
| Personnel                               | \$36,582        |
| Travel and Accommodations               | \$12,350        |
| Workshops                               | \$4,350         |
| Field Days                              | \$10,600        |
| Printing/Duplicating Workshop Notebooks | \$9,000         |
| Website Development and Maintenance     | \$5,088         |
| <b>TOTAL</b>                            | <b>\$77,970</b> |

### Project location

This SEP consists of conducting a total of five (5) compliance promotion activities consisting of three (3) workshops in the Southeast and two (2) field day trainings for dairy farmers that use center pivot irrigation systems to land apply manure. Two workshops and one field day will be held in Georgia and the remaining sessions will be held in another location to be determined.

### Project summary

Compliance promotion. As part of the implementation of the compliance promotion SEP, St. John, L.L.C. and Piedmont Dairy of Georgia, Inc. ("St. John Dairies") in cooperation with Southeast Milk, Inc. and other partner organizations will present three compliance promotion workshops and two field training days in the Southeast United States. Two of the workshops and one of the field days will be held in Georgia. The objective of this SEP is to educate the agricultural community about how to improve practices at dairy farms with the goal of preventing pollution and improving surface water quality. The total proposed budget for the restoration is \$77,970.

### Project description

The objective of the SEP is to educate the agricultural community on how to improve practices at dairy farms with the goal of preventing pollution and improving surface water quality and thus compliance with the Clean Water Act. The SEP will require St. John Dairies to develop and implement an animal waste management compliance assistance program for dairies in the Southeast United States. Three educational training workshops and two field training days will be offered in the Southeastern United States. In an effort to reach as many farmers in Georgia as possible, two educational workshops will be scheduled, one in the northern part of the state and one in the southern part of the state. The remaining workshop will be held in other Southeastern states, the location of which will be identified by St. John Dairies based on where the best opportunities exist, taking into consideration each state's regulatory scheme and whether

dairy operators use center pivot irrigation systems to land apply manure in that state. One of the field training days will take place in Georgia with the other one to take place in another state where dairy operators use center pivot irrigation systems to land apply manure. The purpose of the field days will be to demonstrate technologies for liquid animal waste application that are consistent with federal and state laws and regulations. New technologies will be discussed and, if available, demonstrated. Record keeping also will be addressed.

Training participants will receive a notebook containing educational materials. The educational materials will include the following topics:

- State and federal animal waste management regulations: what livestock producers are required to do
- When and where producers can apply animal waste: a tutorial on identifying and protecting jurisdictional waters of the United States
- Designing comprehensive nutrient management plans
- Implementing comprehensive nutrient management plans
- Record keeping
- Enforcement case study on the Barrington & Highbrighton facilities

Participants will receive a notebook containing educational materials which will be reviewed during training events. A webpage accessible through Southeast Milk, Inc.'s website will be developed. The webpage will include the educational materials, as well as a schedule of the regional workshops. The possibility of posting portions of the workshops on the website is currently being explored with Southeast Milk, Inc. Contact information will be provided, which will foster communication and networking among farmers and experts in the region. The target audience will be dairy farmers and other agribusinesses throughout the Southeast who currently or in the future may land apply wastewater with pivot irrigation equipment.

#### Expected Environmental Benefit

The anticipated environmental benefits from the proposed SEP will be increased knowledge of environmental issues as they pertain to dairy facilities in the Southeast United States, as well as increase knowledge of the regulatory requirements for concentrated animal feeding operations in the Southeast. Development of web support materials will expand the audience that may be reached to dairies throughout the United States and possibly the world.

#### Project Schedule

Respondent shall ensure that the Project activities are performed as follows:

| <b>Activity</b>                                   | <b>Deadline</b>   |
|---|---|
| Project begins                                    | Within thirty (30) days of the effective date of CA/FO  |
| Quarterly reports begin                           | Within sixty (60) days of the effective date of CA/FO and every ninety (90) days after until project evaluation period is ended |
| Submit training materials for review and approval | Within sixty (60) days of the effective date of CA/FO   |
| Training Workshops                                | Within twenty-three (23) calendar months of effective date of CA/FO   |
| Field Days  | Within twenty-three (23) calendar months of effective date of CA/FO   |
| Submit SEP Completion Report                      | Within twenty-four (24) calendar months of effective date of CA/FO  |

### Organizational Information

Soil & Water Engineering Technology, Inc. (“SWET”) will take the lead in developing and presenting the compliance promotion materials at the workshops and field days. SWET will work with St. John Dairies in this effort, as well as Southeast Milk, Inc., a dairy cooperative with members throughout the Southeast. Southeast Milk, Inc. will seek input on program development from other affiliated agribusinesses, including other producer organizations and local farm bureaus, as appropriate. Partner organizations that will support the activities of the lead organization/partner include the Sunbelt Milk Producers, Inc., a wholly owned subsidiary of Southeast Milk, Inc., Georgia Agribusiness Council, and the Georgia Milk Producers. In addition, several entities will be involved in an advisory capacity of the compliance promotion materials such as the United States Department of Agriculture agencies (including, as appropriate, state representatives of the Natural Resources Conservation Service and the Agricultural Research Service), the Georgia Environmental Protection Division (and, as appropriate, other states’ counterparts), the Georgia Department of Agriculture (and, as appropriate, other states’ counterparts), the University of Georgia (and, as appropriate, other states’ extension service counterparts), Troutman Sanders LLP, and pivot technology developers and manufacturers.

SWET will be the coordinating organization and first point of contact.

Soil & Water Engineering Technology, Inc.  
3448 NW 12th Ave.  
Gainesville, Florida 32605

Southeast Milk, Inc.  
1950 SE County Highway 484  
Bellevue, Florida 34420

Sunbelt Milk Producers, Inc.

P.O. Box 547666  
Orlando, Florida 32804

Georgia Agribusiness Council, Inc.  
Post Office Box 119  
Commerce, Georgia 30529

Georgia Milk Producers, Inc.  
1641 New High Shoals Road, Suite 5  
Watkinsville, Georgia 30677

Contact Person

Richard Gelber, Manager  
Barrington Dairy  
(352) 359-2628  
richardagelber@gmail.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
ST. JOHN, L.L.C. ) **CONSENT AGREEMENT AND**  
 ) **FINAL ORDER**  
and )  
BARRINGTON DAIRIES, INC. )  
BARRINGTON DAIRY )  
MONTEZUMA, GEORGIA )  
 )  
RESPONDENT. ) **DOCKET NO. CWA-04-2008-4538(b)**

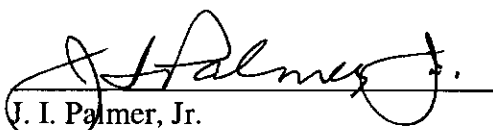
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**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: SEP 22 2008

  
J. I. Palmer, Jr.  
Regional Administrator



**CERTIFICATE OF SERVICE**

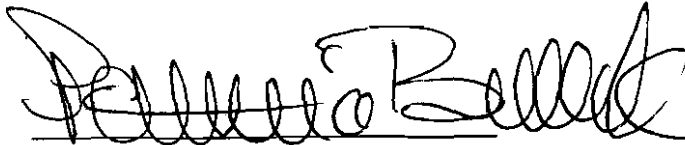
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of St. John, L.L.C. and Barrington Dairies, Inc., **Docket No. CWA-04-2008-4538(b)** (filed with the Regional Hearing Clerk on 9-22, 2008, was served on 9-22, 2008, in the manner specified to each of the persons listed below.

By hand-delivery: Laurie Dubriel  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested: Ron St. John  
St. John L.L.C.  
4951 N.W. 170<sup>th</sup> Street  
Trenton, FL 32693  
(352) 463-6613

Ron St. John  
Barrington Dairies, Inc.  
4951 N.W. 170<sup>th</sup> Street  
Trenton, FL 32693  
(352) 463-6613

James Sommerville, Manager  
Program Coordination Branch  
Georgia Environmental Protection Division  
2 Martin Luther King, Jr. Drive, SE  
1452 East Floyd Tower  
Atlanta, Georgia 30334

A handwritten signature in black ink, appearing to read "Patricia A. Bullock", written over a horizontal line.

Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511