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

MAR - 5 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-133

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Roger Bajema, President
R. Bajema Farm, Inc.
792 E. Badger Road
Lynden, Washington 98264

Re: R. Bajema Farm, Inc.
Concentrated Animal Feeding Lot

Dear Mr. Bajema:

Please find enclosed a copy of the Compliance Order on Consent (Order) between the U.S. Environmental Protection Agency (EPA) and R. Bajema Farm, Inc., issued pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319. The Order requires that all actions required to come into compliance with the Clean Water Act be completed by no later than December 31, 2015.

Should you have any questions regarding this letter or the enclosed Order, please contact Steven Potokar at (206) 553-6354.

Sincerely,

Edward J. Kowalski
Director

Enclosure

cc w/enc: Don Seeberger, Ecology
Josh Baldi, Ecology
Doug Allen, Ecology

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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| IN THE MATTER OF: | ) | Docket No. **CWA-10-2014-0033** |
| | ) | |
| | ) | |
| R. Bajema Farm, Inc., | ) | |
| Lynden, Washington | ) | |
| | ) | COMPLIANCE |
| | ) | ORDER BY CONSENT |
| Respondent | ) | |
| | ) | |

## STATUTORY AUTHORITY

1. This Compliance Order By Consent (Order) is entered into voluntarily by R. Bajema Farm, Inc. (Respondent) and is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Sections 308 and 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. §§ 1318, 1319(a). This authority has been delegated to the Regional Administrator of EPA Region 10, and has been redelegated to the Director of the Office of Compliance and Enforcement.

2. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect

to any issue of fact or law or any terms and conditions set forth in this Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

## FINDINGS AND CONCLUSIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), further provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

5. Section 502(12) of the Act, 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(7) of the Act, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "waters of the United States." 40 CFR § 122.2 defines "waters of the United States" to 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; and tributaries to those waters.

6. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, solid waste, biological materials and agricultural waste. Section 502(14) of the Act, 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."

7. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), provides that the Administrator may issue a compliance order when the Administrator finds that a person is in violation of Section 301 of the Act, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in an NPDES permit.

8. Respondent is a corporation and thus is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

9. Respondent owns and operates a Dairy located at 792 E Badger Road, Lynden, Washington, 98264 (Facility).

10. 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 200 to 699 mature dairy cows is a medium "concentrated animal feeding operation" or CAFO when pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, 40 C.F.R. § 122.23(b)(4)(ii)(A).

11. Respondent's Facility confined more than 200 mature dairy cows for a total of 45 days or more in a 12 month period at all times. Respondent's facility is a medium CAFO, as defined by 40 C.F.R. § 122.3(b)(4)(ii)(A), and is therefore a point source as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

12. On February 21, 2013, EPA inspected Respondent's Facility. During that

inspection, EPA observed that water mixed with manure from a confinement pen on Respondent's Facility was flowing from the confinement pen to a drain which drained to an unnamed ditch parallel to East Badger Road. In addition, EPA observed that water from a pipe that drained the roof gutters on a building on Respondent's Facility flowed through manure and the manure-containing water discharged to the same unnamed ditch parallel to East Badger Road. The unnamed ditch was flowing at the time of inspection. The EPA inspectors sampled the water on the facility and in the ditch. Results from the sampling showed levels of Fecal coliform bacteria exceeding regulatory levels.

13. The water which drained to the unnamed ditch is a "*process wastewater,*" which, as defined at 40 C.F.R. § 122.23(b)(7), means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems, washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals: or dust control; and also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. In this instance, the water meets the definition of "process wastewater" because the water comes into contact with byproducts, primarily manure.

14. The process wastewater from the confinement pen and piping system flowed from the unnamed ditch parallel to East Badger Road. At its intersection with East Badger Road the flow passed through a culvert on the west side of Bender Road to the east side of Bender Road to an open water conveyance that flows south and is called Bender Road ditch. The flow from Bender Road ditch flows into Fishtrap Creek, which is a tributary of the Nooksack River. The

Nooksack River flows into the Puget Sound. Puget Sound is connected to the Pacific Ocean. The Nooksack River, Puget Sound 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 each a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

15. The discharge of process wastewater from Respondent's Facility to the roadside ditch is considered a discharge of "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

16. An NPDES permit is required for all process wastewater discharges from a Facility meeting the definition of a medium CAFO.

17. Respondent's Facility is not authorized to discharge by an NPDES permit, and all process wastewater discharges from Respondent's Facility are unlawful. Respondent's discharge of process wastewater from the Facility to the roadside ditch is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## COMPLIANCE ORDER ON CONSENT

18. Based upon the foregoing FINDINGS and pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), it is AGREED and ORDERED as follows:

19. Respondent shall implement the following actions by the dates listed to achieve the milestone of no discharge of pollutants to waters of the U.S. from Respondent's facility:

a. **By no later than 2/28/2014, Respondent shall install a berm around those portions of the facility necessary to contain**

**manure and/or water laden with manure and/or any pollutant and shall contain such manure and/or water laden with manure and/or any pollutant within the installed berm and shall compact all manure contained by the berm so as to prevent any leaching to any groundwater with a direct hydraulic connection to surface waters;**

b. **By no later than 2/28/2014, Respondent shall re-grade and re-gravel all driveways into and on the facility and divert surface water runoff into vegetated retention basins that can evaporate or completely contain the diverted surface runoff;**

c. **By no later than 2/28/2014, Respondent shall reroute silage slab runoff to a retention basin that will be vegetated by no later than 9/1/2014, so that runoff that can be evaporated or completely contained in the retention basin;**

d. **By no later than 2/28/2014, Respondent shall ensure that all structures are operated and maintained to clean sediment from all catch basins, retention basins and sediment traps; the parties intend this to be an ongoing obligation of the Respondent but for purposes of this Order, Respondent will report on this action in each quarterly report until 12/31/2015; and**

e. **By no later than 7/1/2014, Respondent shall update and implement the Dairy Nutrient Management Plan for the Facility.**

20. Respondent shall submit quarterly progress reports to EPA and the Washington Department of Ecology (Ecology) which outline the progress made towards achieving compliance with no discharge from Respondent's facility. The reports shall describe: 1) all actions within the past 3 months and 2) all milestones, if any, and corresponding dates in the upcoming 3 months. The report is due by the first day of the reporting quarter with the first report due on **3/31/2014**. All actions must be completed by no later than **12/31/2015**.

21. In the event Respondent is unable to comply with any requirement of this Order, Respondent shall, within 10 days of becoming aware of such inability, provide written notifications to EPA and Ecology containing the following information:

a. A summary of the specific reasons why Respondent is unable to comply with the requirement;

b. A summary of all actions taken by Respondent or others acting on behalf of Respondent which Respondent alleges demonstrates "good faith efforts" to comply with the requirement; and

c. The expected date and the activities necessary to be taken by Respondent or others acting on behalf of Respondent which will ensure that Respondent will achieve compliance with the requirement.

22. Submittals required by this Order must be sent to:

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, OCE-133
Seattle, Washington 98101
Attn: Steven Potokar

Washington Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, Washington 98225
Attn: Doug Allen

## EFFECTIVE DATE AND TERMINATION

23. This Order shall take effect upon signature by EPA.

24. The Order shall terminate when a request in writing by Respondent for termination of this Order is granted in writing by EPA or upon EPA's provision of written notice of termination of this Order to Respondent.

## SANCTIONS

25. Failure to comply with the terms of this Order may result in Respondent's liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Order, a United States District Court may impose civil penalties if the court determines that Respondent has violated the Act and failed to comply with the terms of the Order.

26. Nothing in this Order shall be construed to relieve Respondent of applicable requirements of federal, state or local law. EPA reserves the right to take enforcement action as authorized by law for violation of this Order or any other applicable requirements.

STIPULATED and AGREED this 25 day of Feb, 2014:

Roger Bajema, President
R. Bajema Farm, Inc.

It is so ORDERED and AGREED this 5TH day of March, 2014:

Edward J. Kowalski, Director
Office of Compliance and Enforcement

The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this Order and to bind Respondent to this document.

Roger Bajema, President
R. Bajema Farm, Inc.

Date: 2/25/14