UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 01 2013

REPLY TO THE ATTENTION OF:

WC-15J

July 1, 2013

CERTIFIED MAIL 7009 1680 0000 7675 1681
RETURN RECEIPT REQUESTED

FOIA Exemption (b) (6)
Rancho Cantera, LLC
FOIA Exemption (b) (6)

Re: Docket No: CWA-05-2013-0011

Dear FOIA Exemption (b) (6)

I have enclosed one copy of the fully executed Consent Agreement and Final Order (CAFO) in the resolution of the above case. It was filed July 1, 2013, with the Regional Hearing Clerk.

The penalty amount agreed upon is $20,000, which is due 60 days after the effective date of this CAFO. A Certified or Cashier Check should be made payable to the "Treasurer, United States of America," at the following address:

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

When submitting your check, **please be sure that the Case Docket No. is included at the bottom of your check.**

There is now an On Line Payment Option available through the Department of Treasury at https://www.pay.gov which allows you to make payments using your credit card, checking or savings account. Using the Search Public Forms field (left side of page) enter "SFO 1.1" to access the EPA Miscellaneous Payments-Cincinnati Finance Center Form. Follow the instructions for payment.

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (50% Postconsumer)

As indicated in your CAFO, a copy of the check or electronic transfer must be sent to:

LaDawn Whitehead (E-19J)
Regional Hearing Clerk
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

Joan Rogers
Water Division (WC-15J)
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

Charles Mikalian (C-14J)
Office of Regional Counsel
U.S. EPA
77 W. Jackson Blvd.
Chicago, IL 60604

If you have any questions, please contact Ms. Joan Rogers, of my staff at (312) 886-2785.

Sincerely,

Dean Maraldo, Chief
Water Enforcement and Compliance Assurance Branch

Enclosure

cc: Bruce Yurdin, IEPA

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MAY 01 2013
REGIONAL HEARING CLERK
USEPA
REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	Docket No. **CWA-05-2013-0011**
RANCHO CANTERA, LLC.	)	
	)	Proceeding to Assess a Class II Civil Penalty
Respondent.	)	under Section 309(g) of the Clean Water Act,
	)	33 U.S.C. § 1319(g).
	)	

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Water Division, U.S. Environmental Protection Agency, Region 5 ("EPA"), and Respondent, Rancho Cantera, LLC ("Respondent"), have agreed to the settlement of this action before the filing of a complaint. Therefore, this action is simultaneously commenced and concluded under Rules 22.13(b) and 22.18(b) of 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* found at 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. EPA institutes this civil administrative proceeding for the assessment of a civil penalty pursuant to the authority granted in Section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g).

3. Respondent consents to the entry of this Consent Agreement and Final Order ("CAFO"), all of the conditions of this CAFO, and the assessment of the civil penalty as outlined in this CAFO.

4. EPA and Respondent agree that the settlement of this matter pursuant to 40 C.F.R. § 22.13(b) is in the public interest and that the entry of this CAFO without engaging in litigation is the most efficient means of resolving this matter.

STATUTORY AND REGULATORY BACKGROUND

5. To restore and maintain the integrity of the nation's water, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into navigable waters of the United States by any person, except in compliance with, *inter alia*, 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 the NPDES program under which EPA and, upon receiving authorization from EPA, a state, may permit discharges into navigable waters, subject to specific terms and conditions.

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 define the term "pollutant" to mean, *inter alia*, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2 define the term "discharge of pollutant" to mean any addition of any pollutant to navigable waters from any point source.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" to mean the waters of the United States.

10. 40 C.F.R. § 122.2 defines "waters of the United States" to include all waters which are, were or may be used in interstate or foreign commerce, including tributaries and wetlands.

11. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2 define the term "point source" to mean any discernible, confined and discrete conveyance including, but not limited to, concentrated animal feeding operations from which pollutants are or may be discharged.

12. Pursuant to 40 C.F.R. § 122.23(b)(1), an "animal feeding operation" is defined as a lot or facility where the following conditions are met:

(i) Animals 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) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

13. Pursuant to 40 C.F.R. § 122.23(b)(4)(i), a "large concentrated animal feeding operation" is defined to include an animal feeding operation that stables or confines 700 or more mature dairy cows.

14. Pursuant to 40 C.F.R. §122.23(b)(2), a "concentrated animal feeding operation" includes an animal feeding operation that qualifies as a "large concentrated animal feeding operation."

15. Pursuant to 40 C.F.R. §§ 122.21(a) and 122.23(d)(1), the owner or operator of a concentrated animal feeding operation which discharges must seek coverage under an NPDES permit.

16. Pursuant to Section 402(b) of the CWA, 42 U.S.C. § 1342(b), EPA has approved the State of Illinois, through its Environmental Protection Agency, to administer the NPDES program, including the issuance of NPDES permits, in Illinois.

17. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation implementing a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

GENERAL ALLEGATIONS

18. Complainant alleges that Respondent is a corporation doing business in the State of Illinois.

19. Complainant alleges that Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

20. Complainant alleges that, at all times relevant to this CAFO, Respondent owned and operated a dairy operation located at 2866 N. Sunnyside Road, Kent, Illinois, 61044 (the "Site").

21. Complainant alleges that, at all times relevant to this CAFO, Respondent had been or was stabling, confining, feeding or maintaining 700 or more mature dairy cows for a total of 45 days or more in a 12-month period at the Site.

22. Complainant alleges that, at all times relevant to this CAFO, crops, vegetation, forage growth, or post-harvest residues were not sustained in the normal growing season over any portion of the Site.

23. Complainant alleges that, at all times relevant to this CAFO, the Site was an "animal feeding operation" as that term is defined by 40 C.F.R. § 122.23(b)(1).

24. Complainant alleges that, at all times relevant to this CAFO, the Site was a "large concentrated animal feeding operation" as that term is defined by 40 C.F.R. § 122.23(b)(4)(i).

25. Complainant alleges that, at all times relevant to this CAFO, the Site was a "concentrated animal feeding operation" as that term is defined by 40 C.F.R. § 122.23(b)(2).

26. Complainant alleges that a waterway known as Yellow Creek flows adjacent to the Site. Yellow Creek flows to the Pecatonica River, which in turn flows to the Rock and Mississippi Rivers. Complainant further alleges that an unnamed waterway flows adjacent to the Site and that the unnamed waterway flows to Yellow Creek.

27. Complainant alleges that the waterways described in Paragraph 26 are each "navigable waters" and are each "waters of the United States" as those terms are defined by 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

28. Complainant alleges that Respondent's activities at the Site result in the generation of wastes including manure, urine, litter, waste feed and process wastewater.

29. Complainant alleges that the wastes described in Paragraph 28, and constituents thereof, are pollutants as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.

30. Complainant alleges that, at all times relevant to this CAFO, Respondent did not have a permit under Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge of pollutants from the Site.

Violations - Discharges without a Permit

31. Paragraphs 1 through 30 are re-alleged here as if set forth in full.

32. On May 12 and 13, 2010, EPA personnel conducted an inspection of the Site ("Inspection").

33. Complainant alleges that, at the time of the Inspection, runoff from the Concrete Silage Pad area at the Site flowed into a riser pipe which was connected to agricultural field tiles which discharged to the unnamed waterway referenced in Paragraph 26.

34. Complainant alleges that, at the time of the Inspection, runoff from the North Pit area of the Site flowed through ditches to Yellow Creek.

35. Complainant alleges that, at the time of the Inspection, runoff from the Green Barn Feedlot and Green Barn confinement areas of the Site flowed through riser pipes and/or ditches to Yellow Creek.

36. Complainant alleges that the runoff described in Paragraphs 33, 34 and 35 contained pollutants as described in Paragraphs 28 and 29.

37. Complainant alleges that the Site and the pipes and ditches referenced in Paragraphs 33, 34 and 35 are each a "point source" as that term is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

38. Complainant alleges that the additions of pollutants to Yellow Creek and the unnamed tributary via the point sources described in Paragraphs 33, 34 and 35 are each a "discharge of pollutants" as that term is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

39. Complainant alleges that, by discharging pollutants to Yellow Creek and to the unnamed tributary without a permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311.

TERMS OF SETTLEMENT

Assessment and Payment of Penalty

40. Based upon the penalty factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA and Respondent agree to settle this matter for $20,000.00.

41. For the purposes of this proceeding, and pursuant to 40 C.F.R. § 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this CAFO; and (b) neither admits nor denies the facts set forth in this CAFO.

42. For purposes only of the allegations and agreements made herein, upon execution of this CAFO, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the CAFO found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

43. Respondent must pay the $20,000.00 civil penalty by mailing a certified or cashier's check made payable to "Treasurer, United States of America" within 60 days after both parties have executed this CAFO and it becomes effective.

44. Respondent must send the check to the following address:

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

45. This civil penalty is not deductible for federal tax purposes.

46. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three persons at the address indicated:

Regional Hearing Clerk
Planning and Management Division (R-13J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Charles Mikalian
Associate Regional Counsel
Office of Regional Counsel (C-14J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Joan Rogers
Water Division (WC-15J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

47. Respondent's failure to pay the assessed civil penalty in accordance with the provisions of this CAFO will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty. This 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 each such quarter.

48. Notwithstanding any other provision of this CAFO, interest shall accrue on any amount overdue under the terms of this CAFO at an annual rate calculated in accordance with 40 C.F.R. § 13.11.

OTHER MATTERS

49. This CAFO settles EPA's claims for civil penalties for the violations alleged above.

50. Nothing in this CAFO relieves Respondent of the duty to comply with the CWA or other federal, state or local laws or statutes.

51. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO. Notwithstanding any other provision of this CAFO, EPA expressly reserves any and all rights to bring an enforcement action pursuant to the Section 504 of the CWA, 33 U.S.C. § 1364, or other

statutory authority should EPA find that the Site is presenting an imminent and substantial endangerment to the health or welfare of persons. EPA also expressly reserves the right: (a) to take any action authorized under Section 309 of the CWA for any matters other than the violations alleged in this CAFO; and (b) to enforce compliance with this CAFO.

52. This CAFO binds both parties, their officers, directors, employees, successors, and assigns to this action. The representative of each party signing this CAFO certifies that he or she has authority to enter into the terms of this CAFO and bind that party to it. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Site.

53. Each party agrees to bear its own costs accrued in the course of this action.

54. Pursuant to 40 C.F.R. § 22.38, the State of Illinois was notified of this proceeding and the other terms of this settlement.

55. The effective date of this CAFO is the date that the CAFO is filed in the office of the Regional Hearing Clerk, after having been signed by the Regional Administrator or her designated representative and subjected to the requirements of Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

56. This CAFO constitutes the entire agreement between the parties.

57. The information required to be maintained or submitted pursuant to this CAFO is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Tinka G. Hyde, Director
Water Division
U.S. Environmental Protection Agency
Region 5

4/29/13
Date

FOIA Exemption (b) (6)

FOIA Exemption (b) (6) Manager
Rancho Cantera, LLC

3/25/13
Date

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Rancho Cantera, LLC
Docket No. CWA-05-2013-0011

FINAL ORDER

This CAFO is hereby approved. The Respondent is hereby ORDERED to comply with all of the terms of the CAFO effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This CAFO disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

By: _____ Dated: 6-26-13

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

Docket No: CWA-05-2013-0011

Facility Name: Ranch Cantera, LLC
2866 N. Sunnyside Road
Kent, Illinois 61044

I hereby certify that the original and one copy of this Consent Agreement and Final Order was filed with the Regional Hearing Clerk on July 1, 2013, the above referenced document was sent Certified Mail to:

CERTIFIED MAIL 7009 1680 0000 7675 1681
RETURN RECEIPT REQUESTED

Mr. Gary Bosma
Rancho Cantera, LLC
2866 N. Sunnyside Road
Kent, IL 61044

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

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RETURN RECEIPT REQUESTED

Michael Garretson, Mgr. Bureau of
Water Compliance and Assurance Section
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62794-9274

Denise Moore DM

Title: Program Assistant

Date: 7/1/13