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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-10-2016-0092

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 Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2 Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 12, 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) 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 Respondent is 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 National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

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. 33 C.F.R. § 328.3; 40 C.F.R. § 230.3(s).

3.1.3 A “point source” includes “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 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 Distillery (Facility) at 5060 Mc Arthur Lake Road in Naples, Idaho.

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

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

3.6.1. Upstream of the Facility, downstream of the Facility, and within the confines of the Facility, the bed of the Stream has signs of scour, hydric soils, a bed and bank, and a visible ordinary high water mark (OHWM). 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 In June and July of 2013 and September of 2014, Respondent constructed a dam within the channel of the Stream, for the purpose of impounding water for use in Respondent's distillation process.

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

3.9 Respondent's distillation process has several process lines for moving fluids, including coolant water, floral water, and reflux water.

3.10 Respondent intermittently discharged coolant water, floral water, and reflux water into the Stream on approximately 61 different days during the period of January through April, 2014.

3.11 Respondent intermittently discharged coolant water and reflux water into the Stream on approximately 21 different days during the period of January through March, 2015.

3.12 During the period of January 2014 through March 2015, Respondent did not have an NPDES permit to discharge pollutants into waters of the United States.

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

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 *Penalty.* Pursuant to 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 \$162,800.

4.3 Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4 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.

4.5 Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency

Chae Park, Compliance Officer
U.S. Environmental Protection Agency

Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Luna.teresa@epa.gov

Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Park.chae@epa.gov

4.6 Except as described in Subparagraph 4.7.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.7 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.

4.7.1. *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).

4.7.2. *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 4.2, 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.

4.8 *Federal Tax.* The penalty described in Paragraph 4.2, including any additional costs incurred under Paragraph 4.7, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.9 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.

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


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

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

DATED:

FOR RESPONDENT:

6/20/16



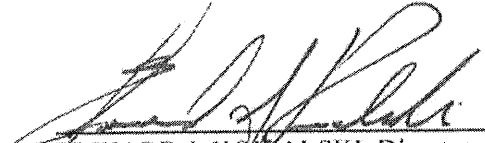
Signature

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-10-2016-0092

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.

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 11th 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-10-2016-0092**, 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