

**STATE OF NEW MEXICO  
SECRETARY OF ENVIRONMENT**

**ENVIRONMENTAL PROTECTION DIVISION  
OF THE NEW MEXICO ENVIRONMENT DEPARTMENT,  
Complainant,**

**NO. AQB DAI-1094-1401-R1 (NOV)**

**DAIRY FARMERS OF AMERICA, INC.,  
Respondent.**

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**SETTLEMENT AGREEMENT AND STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order (“Final Order”) is entered into between the Environmental Protection Division (“Division”) of the New Mexico Environment Department (the “Department”) and the Respondent, Dairy Farmers of America, Inc. (“Respondent”) (collectively, the “Parties”) to resolve alleged statutory, regulatory, and permit violations by the Respondent. The Department alleges violations of the New Mexico Air Quality Control Act (“AQCA”), NMSA 1978, Sections 74-2-1 to 74-2-17; the Air Quality Control Regulations (“AQCR”), 20.2. NMAC (“Regulations”), and Air Quality Permit Number P234-R1M1 (“Permit”).

**I. BACKGROUND**

**A. PARTIES**

1. The Department is an agency of the executive branch of the State of New Mexico, created pursuant to NMSA 1978, § 9-7A-4. The Division is an organizational unit of the Department. The Secretary of the Department has delegated to the Director of the Division the authority to seek administrative enforcement of the AQCA and the AQCR, including assessing

civil penalties for violations thereof. NMSA 1978, § 74-2-12. The Air Quality Bureau ("Bureau") is an organizational unit of the Division.

2. The Respondent owns and operates a fluid milk manufacturing facility in Portales, New Mexico (the "Facility"), located in Roosevelt County. The Facility operates under air quality permit number P234-R1M1.

## **B. HISTORY AND ALLEGED VIOLATIONS**

3. Permit P234-R1M1, Dairy Industry A601.B states, in relevant part, that "[t]he permittee shall conduct monthly operational inspections for dryers, D1 and D2...to determine that the dryer(s)...are operating properly."

4. On July 17, 2014, the Bureau performed a review of the Semi-Annual Report for the Facility received by the Bureau on June 16, 2014 for the monitoring period November 1, 2013, through April 30, 2014. During the review, the Bureau found that monthly operational inspections were not performed for the Facility's Dryer Units D1 and D2 for the months of January, February, and March 2014.

5. On January 23, 2015, the Bureau performed a review of the Semi-Annual Report for the Facility received by the Bureau on November 21, 2014 for the monitoring period May 1, 2014, through October 31, 2014. During the review, the Bureau found that a monthly operational inspection was not performed for Unit D2 for the month of September 2014.

6. Permit P234-R1M1, Dairy Industry A601.C states, in relevant part, that "[t]he permittee shall monitor the excess air level in the flue gas semi-annually using a portable oxygen analyzer, an ORSAT analyzer, or other method approved in advance by the Department."

7. On January 23, 2015, the Bureau performed a review of the Semi-Annual Report for the Facility received by the Bureau on November 21, 2014 for the monitoring period May 1,

2014, through October 31, 2014. During the review, the Bureau found that the Respondent failed to perform the semi-annual dryer excess air inspection for Unit D1 for the monitoring period.

8. Permit P234-R1M1, Dairy Industry A601.D states, in relevant part, that "[t]he differential pressure drop across the filter element of the baghouse shall be measured each day that the Product Dryers (Units D1 and D2) and Product Packaging (Unit V1) are operated."

9. On July 17, 2014, the Bureau performed a review of the Semi-Annual Report for the Facility received by the Bureau on June 16, 2014 for the monitoring period November 1, 2013, through April 30, 2014. During the review, the Bureau found that the Unit V1's differential pressure was not measured from January 1 to April 30, 2014.

10. On January 23, 2015, the Bureau performed a review of the Semi-Annual Report for the Facility received by the Bureau on November 21, 2014 for the monitoring period May 1, 2014, through October 31, 2014. During the review, the Bureau found that the Respondent failed to log ten (10) days of monitoring records of differential pressure drop readings for Unit V1.

11. On June 10, 2015, the Bureau issued to the Respondent Notice of Violation DAI-1094-1401 ("NOV"), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to conduct Dryer Units D1 and D2 monthly operational inspections, which is a violation of Permit P234-R1M1, Dairy Industry A601.B.; 2) failure to report semi-annually the Dryer Units D1 and D2 excess air level monitoring firing box temperatures, which is a violation of Permit P234-R1M1, Dairy Industry A601.C.; 3) failure to measure the semi-annual excess air level in the flue gas from Dryer Unit D1, which is a violation of Permit P234-R1M1, Dairy Industry A601.C.; 4) failure to record differential pressure drop data across the Unit VI baghouse filter element, which is a violation of Permit P234-R1M1, Dairy Industry A601.D.; 5) failure to operate within the Dryer Units D1 and D2 maximum hourly

production rate limits, which is a violation of Permit P234-R1M1, Dairy Industry A601.E.; and 6) failure to operate Dryer Unit D1 within 110 percent of the tested capacity rate limit, which is a violation of Permit P234-R1M1, General Condition B111.A.

12. The NOV included a Corrective Action Verification (“CAV”) requiring the Respondent to submit to the Bureau measures taken to ensure future compliance with the permit conditions.

13. On July 14, 2015, the Bureau received the CAV from the Respondent. The CAV contained additional information supporting the withdrawal of Violations 2, 5, and 6 referenced in paragraph 11.

14. On December 7, 2015, the Bureau issued to the Respondent a Revised Notice of Violation DAI-1094-1401-R1 (“NOV”), alleging violations of the AQCA, the AQCR, and the Permit. The alleged violations consisted of: 1) failure to conduct Dryer Units D1 and D2 monthly operational inspections, which is a violation of Permit P234-R1M1, Dairy Industry A601.B.; 2) failure to measure the semi-annual excess air level in the flue gas from Dryer Unit D1, which is a violation of Permit P234-R1M1, Dairy Industry A601.C.; and 3) failure to record differential pressure drop data across the Unit VI baghouse filter element, which is a violation of Permit P234-R1M1, Dairy Industry A601.D.

15. The Parties have engaged in settlement discussions to resolve the NOVs without further proceedings.

## **II. COMPROMISE AND SETTLEMENT**

### **A. GENERAL**

16. The Respondent does not admit any of the allegations in the NOV. To avoid further legal proceedings, the Division and the Respondent agree to the terms and conditions in this Final Order to resolve the alleged violations in the NOV.

17. The Parties admit jurisdiction and consent to the relief specified herein.

#### **B. CIVIL PENALTY**

18. In compromise and settlement of the alleged violations set forth in the NOV and upon consideration of the seriousness of the alleged violations and Respondent's good faith efforts to comply, the Parties agree that the Respondent shall pay a civil penalty of \$19,800.00 to the State of New Mexico within 30 calendar days after the effective date of this Final Order.

19. Payment shall be made to the *State of New Mexico General Fund* by certified or corporate check and sent to the following address:

New Mexico Environment Department  
Air Quality Bureau  
c/o Compliance and Enforcement Manager  
525 Camino de los Marquez, Suite 1  
Santa Fe, New Mexico 87505

20. If the Respondent fails to make timely and complete payment of the civil penalty, the Respondent shall pay a stipulated penalty of \$250.00 per day for each day a payment is not timely or complete. The Respondent shall not contest or dispute in any way the stipulated penalty of \$250.00 per day in the event that the Department brings an action against the Respondent for the failure to make timely or complete payment.

### **III. OTHER TERMS AND CONDITIONS**

#### **A. RESERVATION OF RIGHTS AND DEFENSES**

21. This Final Order shall not be construed to prohibit or limit in any way the Department from requiring the Respondent to comply with any applicable state or federal requirement not

resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Department from seeking any relief authorized by the AQCA for violation of any state or federal requirement applicable to the Respondent not resolved herein. This Final Order shall not be construed to prohibit or limit in any way the Respondent from raising any defense to a Department action seeking such relief.

**B. MUTUAL RELEASE**

22. The Parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and violations alleged in the NOV. Such release applies only to civil liability.

**C. WAIVER OF STATE LIABILITY**

23. The Respondent shall assume all costs and liabilities incurred in performing all obligations under this Final Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for the Respondent's performance of any obligation under this Final Order.

**D. EFFECTIVE DATE AND TERMINATION DATES**

24. This Final Order shall become effective on the date it has been signed by the Department Secretary.

25. Except as otherwise provided in this paragraph, the terms of this Final Order shall terminate when the Respondent has fulfilled the requirements of this Final Order. The reservations of rights and defenses and the mutual release in paragraphs 21 and 22 shall survive the execution and performance of this Final Order, and shall remain in full force and effect as an agreement between the Parties.

**E. INTEGRATION**

26. This Final Order merges all prior written and oral communications between the Parties concerning the subject matter of this Final Order, contains the entire agreement between the Parties, and shall not be modified without the express written agreement of the Parties.

**F. BINDING EFFECT**

27. This Final Order shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

**G. AUTHORITY OF SIGNATORIES**

28. The persons executing this Final Order on behalf of the Respondent and the Division, respectively, represent that he or she has the authority to execute this Final Order on behalf of the Respondent and the Division.

**H. SIGNATURE AND COUNTERPARTS**


29. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

ENVIRONMENTAL PROTECTION DIVISION  
NEW MEXICO ENVIRONMENT DEPARTMENT

By:   
MICHAEL VONDERHEIDE  
DIRECTOR

Date: 1/25/16

DAIRY FARMERS OF AMERICA, INC.

By:   
Print Name: Joey Martin  
Print Title: Plant Manager

Date: 1/19/16



**STIPULATED FINAL COMPLIANCE ORDER**

This Settlement Agreement and Stipulated Final Compliance Order, agreed to by the Division and the Respondent Dairy Farmers of America, Inc., is hereby incorporated herein and **APPROVED AS A FINAL COMPLIANCE ORDER** issued pursuant to NMSA 1978, §74-2-12.

*for* *Butch Longate*  
RYAN FLYNN  
SECRETARY  
ENVIRONMENT DEPARTMENT

Date: 1/27/16