

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No. -----

TWIN COUNTIES DAIRY, LLC

Defendant.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	JURISDICTION AND VENUE	1
III.	APPLICABILITY	1
IV.	DEFINITIONS	2
V.	CIVIL PENALTY	3
VI.	COMPLIANCE REQUIREMENTS	4
VII.	REPORTING REQUIREMENTS	6
VIII.	STIPULATED PENALTIES	7
IX.	FORCE MAJEURE	8
X.	DISPUTE RESOLUTION	10
XI.	INFORMATION COLLECTION AND RETENTION	11
XII.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	12
XIII.	COSTS	13
XIV.	NOTICES	13
XV.	EFFECTIVE DATE	15
XVI.	RETENTION OF JURISDICTION	15
XVII.	MODIFICATION	15
XVIII.	TERMINATION	15
XIX.	PUBLIC PARTICIPATION	16
XX.	SIGNATORIES/SERVICE	16
XXI.	INTEGRATION	16
XXII.	FINAL JUDGMENT	16

I. INTRODUCTION

- A. Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (EPA), has filed a complaint in this action concurrently with this Consent Decree, alleging that Twin Counties Dairy, LLC (the Defendant) violated Sections 301 and 402 of the Clean Water Act (Act), 33 U.S.C. §§ 1311, 1342.
- B. The Complaint against Defendant alleges that Defendant has had effluent violations of the applicable National Pollution Discharge Elimination System (NPDES) permit under the Clean Water Act at its facility located in Kalona, Iowa (the Facility) following the purchase of the facility on December 31, 2012 from Twin County Dairy, Inc. The Complaint alleges violations of the effluent limitations for Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), Nitrate, and Ammonia.
- C. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.
- D. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

- 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395(a), because Defendant Twin Counties Dairy, LLC is located in this judicial district and the violations in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, the Defendant consents to the Court's jurisdiction over this Decree and any such action and over the Defendant and consents to venue in this judicial district.
- 2. For purposes of this Consent Decree, the Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

III. APPLICABILITY

- 3. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 7, the United States Attorney for the Southern District of Iowa, and the United States Department of Justice, in accordance with Section XIV (Notices). Until termination of this Decree pursuant to Section XVIII, any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.
5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.
6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto;

“Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Defendant” shall mean Twin Counties Dairy, LLC;

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” shall have the definition provided in Section XV.

“Existing Domestic Wastewater” shall mean wastewater from residential and commercial locations that have an established conveyance for flow to the TCD lagoon system for treatment.

“Facility” shall mean Defendant’s facility located in Kalona, Iowa.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

“Parties” shall mean the United States and Defendant;

“Section” shall mean a portion of this Decree identified by a roman numeral;

“State” shall mean the State of Iowa.

“United States” shall mean the United States of America, acting on behalf of EPA;

V. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Twin Counties Dairy, LLC shall pay the sum of \$190,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.
9. Defendant shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit (FLU) of the United States Attorney’s Office for the Southern District of Iowa after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (CDCS) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Mike Matter
Twin Counties Dairy, LLC
2425 SE Oak Tree Court
Ankeny, IA 50021-7102
515-289-7625
mike.matter@proliantinc.com

Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices). At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at acctsreceivable.cinwd@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and] (ii) to the United States via email or regular mail in accordance with Section XIV and (iii) to EPA in accordance with Section XIV. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10716.

10. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VI. COMPLIANCE REQUIREMENTS

11. Defendant, Twin Counties Dairy, LLC, shall comply with Sections 301 and 402, 33 U.S.C. §§ 1311, 1342 of the Act, including all provisions of any applicable NPDES Permit.
12. If by June 1, 2015, Defendant has not sold assets to a third party purchaser that will continue to use the lagoon cells in its operations, then by July 1, 2015, Defendant shall submit to EPA a plan for both: (1) the disposal of sludge in each lagoon cell in accordance with 40 C.F.R. § 503 and 567 Iowa Administrative Code Chapter 121; and (2) the drawdown and disposal of the remaining wastewater in the lagoons and final closure of the lagoon cells. Any plan regarding closure of lagoon cells must propose closure by removing enough of the berm to render the cell incapable of retaining water, or converting the cells to a non-wastewater use, including natural habitat or wetlands.
 - a. Defendant shall complete the disposal of sludge as soon as possible but no later than April 1, 2016. Within thirty (30) days of completion, Defendant shall file with EPA a written report stating how it complied with 40 C.F.R. § 503 and 567 Iowa Administrative Code Chapter 121 and provide: a sludge application map showing the location of the land application of sludge; the acreage upon which sludge was applied; laboratory testing results from all testing required by 40 C.F.R. § 503 and 567 Iowa Administrative Code Chapter 121 for the particular application; and the dry weight in tons of sludge applied to the acreage identified on the sludge application map.
 - b. EPA shall review the lagoon closure plan submitted pursuant to this paragraph in accordance with the provisions concerning Approval of Deliverables. (Paragraphs 14-18). Within 330 Days after EPA approves the lagoon closure plan, Defendant shall complete the drawdown and disposal of the remaining wastewater in the lagoons and final closure of the lagoon cells as described herein.
13. By June 1, 2015, Defendant shall submit to EPA one of the following: a) a confirmation that Existing Domestic Wastewater has been accepted for treatment by a third-party purchaser that will continue to use the lagoon cells in its operations; b) a certification (per Appendix A) that Existing Domestic Wastewater will no longer be accepted by Defendant and is no longer being sent to the collection system that is connected to the lagoons or c) a certification (per Appendix A) that generators of Existing Domestic Wastewater have been provided three month's notice that the Lagoons will be closed as set forth in paragraph 12 above and will no longer be available to accept domestic wastewater. If Defendant chooses option "c)" set out in the preceding sentence then on October 1, 2015, Defendant shall submit to EPA a certification (per Appendix A) that Existing Domestic Wastewater will no longer be accepted by Defendant and is no longer being sent to the collection system that is connected to the lagoons.
14. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA shall in writing: (a) approve the

submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

15. If the submission is approved pursuant to Paragraph 14, Defendant Twin Counties Dairy, LLC shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 17(b) or (c), Defendant Twin Counties Dairy, LLC shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to Defendant Twin Counties Dairy, LLC's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).
16. If the submission is disapproved in whole or in part pursuant to Paragraph 17(c) or (d), Defendant Twin Counties Dairy, LLC shall, within 45 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant Twin Counties Dairy, LLC shall proceed in accordance with the preceding Paragraph.
17. Any stipulated penalties applicable to the original submission, as provided in Section VIII, shall accrue during the 45 day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant Twin Counties Dairy, LLC's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.
18. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Defendant Twin Counties Dairy, LLC to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies subject to Defendant Twin Counties Dairy, LLC's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.
19. Permits. Where any compliance obligation under this Section requires Defendant Twin Counties Dairy, LLC to obtain a federal, state, or local permit or approval, Defendant Twin Counties Dairy, LLC shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant Twin Counties Dairy, LLC may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant Twin Counties Dairy, LLC has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. REPORTING REQUIREMENTS

20. Defendant Twin Counties Dairy, LLC shall submit the following reports:

a. Within 30 Days of Lodging and continuing every 30 Days thereafter, until termination of this Decree pursuant to Section XVIII, Defendant Twin Counties Dairy, LLC shall submit via email and hard copy a quarterly report for the preceding month that shall include the status of the compliance activities set forth in Section VI. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If Defendant Twin Counties Dairy, LLC violates, or has reason to believe that it may violate, any requirement of this Consent Decree, it shall notify the United States of such violation and its likely duration, in writing, within ten business Days from the Day Defendant Twin Counties Dairy, LLC first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant Twin Counties Dairy, LLC shall so state in the report. Defendant Twin Counties Dairy, LLC shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendant Twin Counties Dairy, LLC becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

21. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant Twin Counties Dairy, LLC's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant Twin Counties Dairy, LLC shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant Twin Counties Dairy, LLC first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

22. All reports shall be submitted to the persons designated in Section XIV (Notices).

23. Each report submitted by Defendant Twin Counties Dairy, LLC under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- 24. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.
- 25. The reporting requirements of this Consent Decree do not relieve Defendant Twin Counties Dairy, LLC of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.
- 26. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

- 27. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including but not limited to any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree. Defendant shall also be liable for stipulated penalties to the United States for violations of the conditions found in its NPDES Permit as well as for unauthorized discharges as set forth below.
- 28. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late.
- 29. Compliance Requirements Set forth in Section VI. If Defendant fails to complete any of the compliance requirements set forth in Section VI, Defendant shall pay the following stipulated penalties:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th Day
\$1,500	15th through 30th Day
\$3,000	31st day and beyond

- 30. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VII of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1000	15th through 30th Day
\$2000	31st Day and beyond

- 31. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

32. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.
33. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.
34. Stipulated penalties shall continue to accrue as provided in Paragraph 31, during any Dispute Resolution, but need not be paid until the following:
 - a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
 - b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.
 - c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.
35. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.
36. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.
37. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of 33 U.S.C. §§ 1311, 1342, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

38. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, which delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best

efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA in accordance with Paragraph 64, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.
40. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
41. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.
42. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), they shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 38 and 39. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of either Defendant arising under this Decree.
44. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when either Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within ten Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.
45. Formal Dispute Resolution. A Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting a Defendant's position and any supporting documentation relied upon by Defendant.
46. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.
47. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.
48. The United States shall respond to a Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.
49. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 54 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 47, a Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

50. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 31. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

51. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

52. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide Defendant splits of any samples taken by EPA.

53. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in

electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to either Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

54. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.
55. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (CBI) under 40 C.F.R. Part 2. As to any information that Defendant seek to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.
56. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

57. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree.
58. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 57. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 57. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or

posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

59. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 57.
60. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §1251, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.
61. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.
62. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

63. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIV. NOTICES

64. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescasemanagement.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10716

As to the United States by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-10716

As to EPA: Jodi Bruno
Technical Program Manager
EPA Region 7
Water Enforcement
11201 Renner Boulevard
Lenexa, KS 66219
(913) 551-7810
Fax (913) 551-9810
bruno.jodi@epa.gov

As to Defendant:

Mike Matter
Twin Counties Dairy, LLC
2425 SE Oak Tree Court
Ankeny, IA 50021-7102
515-289-7625
mike.matter@proliantinc.com

and

James L. Pray
BrownWinick Law Firm
666 Grand Ave. Suite 2000
Des Moines, IA 50309
515-242-2404
pray@brownwinick.com

65. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.
66. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

67. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

69. Except as otherwise set forth in the Decree, the terms of this Consent Decree, including any attached Appendices or Plans approved by EPA pursuant to Section VI, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.
70. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 49, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

71. After Defendant Twin Counties Dairy, LLC has completed the requirements of Section VI (Compliance Requirements), and Defendant has paid the civil penalties and any accrued stipulated penalties as required by this Consent Decree, it may serve upon the United States a Request for Termination, stating that it has satisfied those requirements, together with all necessary supporting documentation.
72. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.
73. If the United States does not agree that the Decree may be terminated, Defendant Twin Counties Dairy, LLC may invoke Dispute Resolution under Section X. However, Defendant Twin Counties Dairy, LLC shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant's consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

75. Each undersigned representative of Defendant and the Deputy Section Chief for the Environmental Enforcement Section of the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.
76. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail directed to counsel for Defendant, James L. Pray of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, PLC at 666 Grand Ave. Suite 2000, Des Moines, Iowa 50309, or by hand delivery of the Complaint to his office, with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

77. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this __ day of _____, 2015.

UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF THE UNITED STATES

DATED: 05-09-2015



THOMAS A. MARIANI, JR.
Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Washington, D.C. 20044-7611

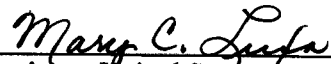
DATED: 5/8/15



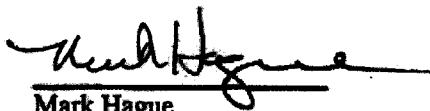
SARA A. COLANGELO
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Washington, D.C. 20044-7611
(202) 514-3394
Sara.Colangelo@usdoj.gov
Member of the Maryland Bar

NICHOLAS A. KLINEFELDT
United States Attorney

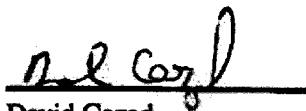
By:



Assistant United States Attorney
U.S. Courthouse Annex, Suite 286
110 E. Court Avenue
Des Moines, Iowa 50309
Tel: (515) 473-9303
Fax: (515) 473-9282
Email: mary.luxa@usdoj.gov



Mark Hague
Acting Regional Administrator
U.S. Environmental Protection Agency, Region VII



David Cozad
Regional Counsel
U.S. Environmental Protection Agency, Region VII



Elizabeth Huston
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region VII
Office of Regional Counsel

FOR TWIN COUNTIES DAIRY, LLC:

3/31/15
Date

Mike Matter
Mike Matter
President & CEO

APPROVED AS TO FORM

3-31-15
Date

By: *James L. Pray*
James L. Pray
Brown, Winick, Graves, Gross, Baskerville &
Schoenebaum, PLC
666 Grand Ave. Suite 2000
Des Moines, Iowa 50309
Telephone: (515) 242-2404
Fax: (515) 323-8504
pray@brownwinick.com

ATTORNEY FOR DEFENDANT

Appendix A – Certification Statement

I certify under penalty of law that Existing Domestic Wastewater will no longer be accepted by Twin Counties Dairy, LLC and is no longer being sent to the collection system that is connected to the lagoons.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Printed name and Title

Date