

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

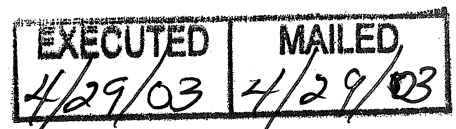
\_\_\_\_\_  
IN THE MATTER OF )  
)  
)

MR. TIM WALKER )  
BLESSED VALLEY DAIRY FARMS, LLC )  
T8S, R5W, S28 )  
MORGAN COUNTY, ALABAMA )  
\_\_\_\_\_) )

CONSENT ORDER NO. 03-109-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act (AEMA), Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act (AWPCA), Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act (FWPCA) §402, 33 U.S.C. § 1342, and without the adjudication of any



issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. Blessed Valley Dairy Farms, LLC is a limited liability corporation operating a dairy farm Concentrated Animal Feeding Operation (CAFO) located in Danville, Morgan County, Alabama, T8S, R5W, S28, and approximately two (2) miles off County Road 55 near Andrews Chapel. Mr. Tim Walker is the owner of Blessed Valley Dairy Farms, LLC.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), § 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the State agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the FWPCA, 33 U.S.C. §§ 1251 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. Pursuant to ADEM Administrative Code Rule 335-6-7-.21, all AFOs regardless of size or registration status, must implemented and maintain appropriate, effective animal waste management system Best Management Practices (BMPs) that meet or exceed USDA Natural Resources Conservation Service technical standards and guidelines for the control of pollutants in storm water and/or process wastewater runoff, including land application. At the time of the September 11, 2001 inspection, BMPs were not being fully maintained at Blessed Valley Dairy

Farms, LLC, resulting in ongoing, uncontrolled discharges of animal waste and other pollutants to Crowabout Creek, a water of the State of Alabama.

5. Pursuant to ADEM Administrative Code Rule 335-6-7-.04, all AFOs regardless of size or registration status, must maintain adequate records to document compliance with ADEM requirements and shall fully implement and regularly maintain comprehensive waste management system BMPs to the maximum extent practicable which meet or exceed NRCS technical standards and guidelines to prevent and minimize discharges of pollution during construction and operation. Facility operational records were not being maintained at Blessed Valley Dairy Farms, LLC at the time of a September 11, 2001 inspection by Department staff.

6. As of the September 11, 2001 inspection, appropriate, effective BMPs that meet or exceed NRCS technical standards and guidelines, and as approved by the State Veterinarian, Alabama Department of Agriculture and Industries (ADAI), for the proper management and disposal of animal mortality were not being fully implemented and maintained at Blessed Valley Dairy Farms, LLC, resulting in the significant potential for increased odor generation and discharges of pollutants to Crowabout Creek, a water of the State of Alabama.

7. As of the September 11, 2001 inspection, a Spill Prevention Control and Countermeasures (SPCC) Plan for onsite fuel tanks had not been constructed and maintained at Blessed Valley Dairy Farms, LLC according to sound engineering practices and CAFO program requirements.

8. A waste management system plan (WMSP) that meets or exceeds NRCS technical standards and guidelines and facility and land application records documenting compliance with NRCS technical standards and guidelines had not been maintained or were not available for review at Blessed Valley Dairy Farms, LLC at the time of the September 11, 2001 inspection.

9. At the time of the September 11, 2001 inspection, Blessed Valley Dairy Farms, LLC was operating a liquid waste system that was not certified by a Qualified Credentialed Professional (QCP). Pursuant to ADEM Admin. Code R. 335-6-7-.13, AFO facilities existing after April 1, 1999, with an earthen storage or treatment facility for liquid waste, which were constructed without documented technical assistance from a QCP according to NRCS technical standards and guidelines, shall submit the required certification/evaluation to continue operation or implement an approved closure plan no later than November 1, 2000. To date, this certification/evaluation has not been submitted to the Department.

10. At the time of the September 11, 2001 inspection, Blessed Valley Dairy Farms, LLC had not submitted a Notice of Registration (NOR) requesting permit coverage. Blessed Valley Dairy Farms, LLC is required to be registered with the Department as a CAFO. Pursuant to ADEM Admin. Code R. 335-6-7-.10, a dairy AFO with more than 200 mature dairy cattle (whether milked or dry cows) and where there is a point source or nonpoint source discharge, or a point source or nonpoint source discharge has occurred after April 1, 1999, of pollutants into groundwater or surface waters of the State through a man-made ditch, flushing system, other

similar man-made devices, or improper handling, storage, transport, distribution, or land application of wastes, is required to register with the Department as a CAFO.

11. A Notice of Violation (NOV), issued October 31, 2001 as a result of the September 11, 2001 inspection, required that within fourteen (14) days of receipt of the notice, Blessed Valley Dairy Farms, LLC file with the Department a full report prepared and certified by a QCP showing the steps that have been taken and are being taken to correct all violations, including a comprehensive animal WMSP that meets or exceeds NRCS technical standards and guidelines, a SPCC plan for all onsite fuel and chemical tanks, and documentation identifying all locations/farms with detailed description of each operation. To date, this report has not been received by the Department.

12. Additionally, the NOV issued October 31, 2001 required that, within sixty (60) days of receipt of the notice, Blessed Valley Dairy Farms, LLC file with the Department a follow-up report that included certification from ADEM recognized QCP and/or NRCS concurrence that the WMSP has been properly prepared, designed, implemented, and/or updated to meet or exceed NRCS technical standards and guidelines and that all waste management structures have been designed, constructed, and can be maintained in accordance with NRCS technical standards and guidelines. To date, this report has not been received by the Department.

13. The Department is in receipt of photographs and instream water quality samples taken August 22, 2001 documenting significant violations of ADEM Administrative Code Chapter 335-6-7 (Animal Feeding Operation/Concentrated

Animal Feeding Operation Program Rules). Pursuant to Code of Alabama 1975, §§22-22-1 through 22-22-14, as amended, and ADEM Admin. Code Chapter 335-6-7, an AFO/CAFO owner or operator shall not discharge pollutants into waters of the State without first having obtained valid NPDES permit coverage. The documented discharges of wastewater by Blessed Valley Dairy Farms, LLC resulted in violations of State Water Quality Standards in Crowabout Creek, a water of the State of Alabama.

14. An NOV requiring timely action to correct deficiencies(s) observed at this site was sent September 23, 1999 as a result of an ADEM inspection conducted on August 19, 1999. A second NOV requiring timely action to correct deficiencies(s) observed at this site was sent February 29, 2000 as a result of an ADEM inspection conducted January 18, 2000. Also, additional deficiencies were observed at this site during three (3) follow-up inspections during August and September 2001, conducted in response to citizen complaints. To date, reports have not been submitted to the Department as required by the NOVs.

15. Blessed Valley Dairy Farms, LLC neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Blessed Valley Dairy Farms, LLC has consented to the terms of this Consent Order.

16. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of Blessed Valley Dairy Farms, LLC, it is hereby ORDERED:

A. That, not later than thirty (30) days after the effective date of this Consent Order, Blessed Valley Dairy Farms, LLC shall pay to the Department a civil penalty in the amount of Five-Thousand Dollars (\$5,000) for the violations cited herein.

B. That, immediately upon the execution of this Consent Order, and continuing thereafter, Blessed Valley Dairy Farms, LLC shall comply with the Alabama Water Pollution Control Act (AWPCA) and ADEM Admin. Code Chapter 335-6-7, except as provided by any compliance schedule contained in this Consent Order.

C. That, within thirty (30) days of the date of execution of this Consent Order, Blessed Valley Dairy Farms, LLC shall submit to the Department a comprehensive WMSP which meets or exceeds NRCS technical standards and guidelines, and is prepared by the NRCS or by a QCP as defined by ADEM Admin. Code R. 335-6-7-.02(rr). The WMSP shall be submitted to the Department prior to implementation, and any comments or recommendations from the Department shall be included in the final WMSP and implemented at the facility.

D. That, within sixty (60) days of the date of execution of this Consent Order, Blessed Valley Dairy Farms, LLC shall fully implement and regularly maintain the ADEM accepted WMSP to achieve continuing compliance with the AWPCA and ADEM Admin. Code Chapter 335-6-7.

E. That within sixty-five (65) days of the date of execution of this Consent Order, unless an extension is granted by the Department, Blessed Valley Dairy Farms, LLC shall submit to the Department:

1. Certification, signed by both the Owner and the QCP that prepared the ADEM accepted WMSP, that each of the animal confinement structures and each of the waste treatment/storage structures at the facility have been constructed in a manner that meets or exceeds NRCS technical standards and guidelines as outlined in the ADEM accepted WMSP and that the waste treatment/storage structures can be operated in a manner to ensure that no unpermitted discharges to groundwater occur,

OR

2. A plan prepared and certified by either an Alabama Registered Professional Geologist or an Alabama Registered Professional Engineer with proven experience in conducting hydrogeological investigations, to implement a groundwater monitoring investigation plan at the facility. The plan shall be submitted to the Department prior to implementation, and any comments/recommendations from the Department shall be included in the final plan and implemented at the facility. Such plan shall include a plan for conducting a



hydrogeological evaluation to determine the depth and direction of groundwater flow beneath the animal waste management system and to determine the site-specific geology beneath the animal waste management system. The plan shall contain provisions for installing, at a minimum, one (1) groundwater monitoring well installed hydrogeologically up-gradient and two (2) groundwater monitoring wells installed hydrogeologically down-gradient of the animal waste management system. The plan shall include a groundwater sampling and analysis plan acceptable to the Department, to monitor groundwater quality in the upper most aquifer below and surrounding the lagoons. Each of the wells shall be initially sampled within fourteen (14) days of installation and the samples shall be analyzed for pH, dissolved oxygen, conductivity, ammonia, Total Kjeldahl nitrogen, nitrates, nitrates and fecal coliform bacteria. The results of each sampling event shall be submitted to the Department within thirty (30) days of sample collection. Additionally, within ninety (90) days of the date of execution of this Consent Order, the Owner shall fully implement and continue to maintain the certified groundwater monitoring plan, until released in writing by ADEM.

F. That, all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

G. That, this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

H. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

I. That, Blessed Valley Dairy Farms, LLC is not relieved from any liability if it fails to comply with any provision of this Consent Order.

J. That, for purposes of this Consent Order only, Blessed Valley Dairy Farms, LLC agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Blessed Valley Dairy Farms, LLC also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Blessed Valley Dairy Farms, LLC shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Blessed Valley Dairy Farms, LLC, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been

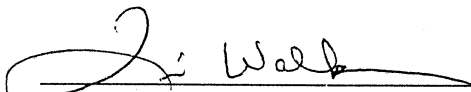
overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable control of Blessed Valley Dairy Farms, LLC) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of Ten (10) days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Blessed Valley Dairy Farms, LLC, the Department may extend the time as justified by the specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

K. That, the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Blessed Valley Dairy Farms, LLC shall not object to such future orders, litigation, or enforcement action

based on the issuance of this Consent Order if future Orders, litigation or other enforcement action address new matters not raised in this Consent Order.

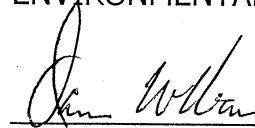
L. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Blessed Valley Dairy Farms, LLC does hereby waive any hearing on the terms and conditions of same.

BLESSED VALLEY DAIRY FARMS, LLC

  
\_\_\_\_\_  
Tim Walker  
Owner

Date Signed: 4/23/03

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
\_\_\_\_\_  
James W. Warr  
Director

Date Signed: 29 APRIL 2003