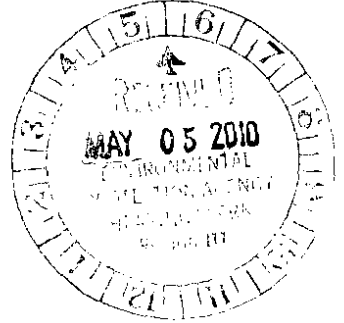


**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**



In the Matter of:

Andrew and Yvette Hudyma
8157 Solomans Cross Court
Millersville, MD 21108

and

Mountaire Farms of Delaware, Inc.
29005 John J. Williams Hwy.
Millsboro, DE 19966-4095

Respondents

Class II Proceeding Under
Section 309(g) of the
Clean Water Act

EPA Docket No. CWA-03-2009-0292

**CONSENT AGREEMENT
and FINAL ORDER as to
Mountaire Farms of Delaware, Inc.**

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III ("Complainant"), and Mountaire Farms of Delaware, Inc., ("Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), alleged in an administrative Complaint filed on September 30, 2009. This CAFO shall constitute a final settlement between EPA and Respondent, its officers, principals, directors, employees, agents, successors and assigns for the violations alleged in the Administrative Complaint.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$11,000 per day for each day of violation, up to a total penalty amount of \$157,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Respondent neither admits nor denies the factual allegations set forth in Section II of the Administrative Complaint filed with the Regional Hearing Clerk on September 30, 2009.
4. Respondent admits the jurisdictional allegations contained in Section I of the Complaint.

III. CONCLUSIONS OF LAW

5. As described in the Findings of Fact and Jurisdictional Allegations in the Administrative Complaint, EPA concludes that Respondent has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT AND FINAL ORDER

6. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
7. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter, without further litigation or trial of any issues, and the entry of this CAFO is the most appropriate means of resolving the claims alleged in the Administrative Complaint. The parties recognize that this is a settlement of a contested matter and that participation in the settlement does not constitute or represent any admission of law or fact by Respondent.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of \$61,875 in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
12. Respondent shall pay the total administrative civil penalty of \$61,875 for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant

Andrew and Yvette Hudyma
EPA Docket No. CWA-03-2009-0292

to 40 C.F.R. § 22.31(c), by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By regular mail:

Regional Hearing Clerk
U.S. EPA Region III
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

By Automated Clearinghouse (ACH):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Respondent shall send notice of such payment, including a copy of the check, to

the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.
14. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40

C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in the Administrative Complaint. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
16. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law.
17. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. Entry of this CAFO is a final settlement of all violations alleged in the Administrative Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
19. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
20. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such

identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

21. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

Andrew and Yvette Hudyma
EPA Docket No. CWA-03-2009-0292

FOR RESPONDENT MOUNTAIRE FARMS OF DELAWARE, INC.:

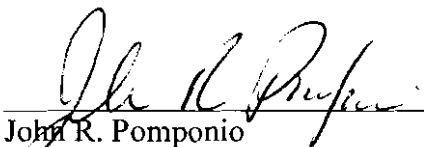
By: Paul Downes

Name: PAUL DOWNES

Title: PRESIDENT

Andrew and Yvette Hudyma
EPA Docket No. CWA-03-2009-0292

FOR RESPONDENT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III:

By: 
John R. Pomponio
Director, Environmental Assessment and Innovation Division
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	Class II Proceeding Under
	:	Section 309(g) of the
Andrew and Yvette Hudyma	:	: Clean Water Act
8157 Solomans Cross Court	:	
Millersville, MD 21108	:	
	:	
and	:	EPA Docket No. CWA-03-2009-0292
	:	
Mountaire Farms of Delaware, Inc.	:	
29005 John J. Williams Hwy.	:	
Millsboro, DE 19966-4095	:	FINAL ORDER as to
	:	Mountaire Farms of Delaware, Inc.
Respondents	:	


FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, (*Consolidated Rules*)" codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves the Respondent from otherwise complying with the applicable requirements set forth in the CWA.

The Respondent is ordered to comply with the Payment Terms of the foregoing Consent Agreement.

Date: MAY 04 2010



Shawn M. Garvin
Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

By hand delivery:

Administrative Law Judge Spencer T. Nissan
US EPA
Mail Code 1900 L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

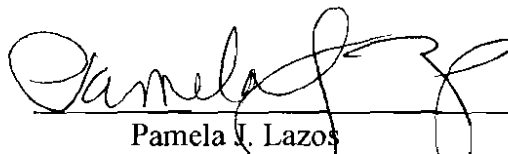
By first class, certified mail, return receipt requested:

Anthony P. Ashton, Esq.
Gina M. Zawitoski, Esq.
DLA Piper, LLP (US)
6225 Smith Avenue
Baltimore, MD 21209-3600

Stephen Smethurst, Jr., Esq.
Matthew T. Mills, Esq.
Adkins, Potts and Smethurst, LLP
P.O. Box 4247
Salisbury, MD 21803-4247

Date: _____

5/5/10



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Consent Agreement and Final Orders In the Matter of
Anthony and Yvette Hudyma, et al., EPA Docket No. 03-
2009-0292

FROM: John R. Pomponio, Director
Environmental Assessment and Innovation Division

Marcia E. Mulkey
Regional Counsel

TO: Shawn M. Garvin
Regional Administrator

We request that you sign the Final Order ("CAFO") entering the Consent Agreement with Mountaire Farms of Delaware, Inc., for violations of Section 404 of the Clean Water Act ("Act"), 33 U.S.C. §1344 as authorized by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section §1319(g).

Respondents, Andrew and Yvette Hudyma are the owners of property northeast of the town of Willards, Wicomico County, Maryland (the "Site"). Respondent, Mountaire Farms of Delaware, Inc., is a subsidiary of Mountaire Corporation who contracted with the Hudymas to construct chicken houses on the Site.

Respondent Mountaire has agreed to pay \$61,875 in settlement of this matter eliminating the need for litigation. In a parallel Consent Agreement, the Hudymas have agreed to pay \$2,500 in settlement of this matter. We request that you approve the attached CAFO. Questions concerning this matter may be directed to Pamela J. Lazos, Sr. Assistant Regional Counsel, at ext. 2658.