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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§ Docket No. CWA-06-2013-1755
	§
AzTex Dairy, Inc., a Texas Corporation,	§ Proceeding to Assess a Class I § Civil Penalty under Section 309(g) § of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
TPDES Permit No. WQ0004844000	§
Facility No. TXU010977	

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 ("Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, "the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including rules related to administrative proceedings not governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 through 22.52.

Based on the following Findings, Complainant finds that the Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Respondent, AzTex Dairy, Inc., is a “person,” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

2. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned or operated AzTex Dairy, Inc., a dairy operation located at 1133 County Road 347, south of the intersection of FM 2156 and County Road 347, in Dublin, Erath County, Texas (“facility”), and was therefore an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

3. The facility is a concentrated animal feeding operation (“CAFO”), as defined by Section 502(14) of the Act and 40 C.F.R. § 122.23(b).

4. Respondent was issued a Concentrated Animal Feeding Operation (“CAFO”) permit by the Texas Commission on Environmental Quality (“TCEQ”), Permit Number WQ0004844000, which became effective on June 12, 2010. The facility was previously authorized under EPA ID TX0121452, which was withdrawn. The National Pollutant Discharge Elimination System (“NPDES”) program was delegated to TCEQ in 1998 and included the CAFO program. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA may authorize a state to administer the permit program.

5. On September 25, 2012, EPA inspectors conducted an oversight compliance evaluation inspection and determined that the facility was violating its TCEQ-issued CAFO permit as described below:

a) The EPA inspectors determined that the facility failed to properly operate and maintain retention control structure ("RCS") #2 in accordance with the requirements of Section VI.A.5 (*RCS Operation and Maintenance*) of its CAFO permit. At the time of the inspection, the inspectors observed that RCS #2 was overtopping its embankments in two locations and was overflowing. EPA inspectors observed that RCS #2 had previously overflowed prior to the September 25, 2012 site inspection. The overflow collected in a small pond (about 20 feet wide and 30 feet long) located about 250 feet west-northwest of RCS #2. Analytical results of the wastewater samples collected from this small pond revealed high concentrations of ammonia nitrogen (53.9 mg/L), biochemical oxygen demand (190 mg/L) and orthophosphate phosphorus (1.17 mg/L). The high concentration of ammonia nitrogen in this pond confirmed that previous overflows from RCS #2 resulted in the formation of this pond.

b) At the time of the inspection, milking parlor wastewater was entering RCS #2, and two pumps had failed, causing the screen separator basin to overflow into RCS #2. The failure of the pumps resulted in an overtopping/overflow of RCS #2.

6. On October 31, 2012, EPA issued Administrative Order Docket Number CWA-06-2013-1711 to Respondent citing failure to comply with permit requirements; and ordering the Respondent to:

a) Submit to EPA, within forty-five (45) days of the effective date of EPA's Order, a written plan and schedule for complying with manure/wastewater storage and management requirements of the TCEQ CAFO permit, including certification by a

licensed Texas professional engineer documenting that: (1) the facility has adequate storage and handling capacity to contain all waste and process-generated wastewater plus runoff during a 25-year, 24-hour storm event; (2) the integrity of the RCS #2 embankments had not been compromised by the overtopping/overflow and still met engineering design specifications; and (3) the facility had repaired or replaced the pumps that failed and caused the overtopping/overflow in RCS #2.

b) Take immediate corrective actions to stop the overtopping/overflow of RCS #2.

7. In response to EPA's Administrative Order, the Respondent submitted a report to EPA, dated December 10, 2012, which stated that the overtopping/overflow from RCS #2 was caused by pump failures and that the malfunctioning pumps had been repaired. The report also included certification by a professional engineer to document that the facility had adequate storage and handling capacity to contain all waste and process-generated wastewater plus runoff during a 25-year, 24-hour storm event.

8. Each violation of the TCEQ CAFO permit described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

9. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

10. EPA has notified TCEQ of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

11. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

12. Based on the foregoing Findings, and pursuant to the authority of Section 309(g)(1) and Section(g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against the Respondent a civil penalty of eleven thousand two hundred dollars (\$11,200.00).

13. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

14. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, Subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record, in accordance with 5 U.S.C.

§ 554, and Respondent waives this right unless Respondent, in its Answer, requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

15. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not the Respondent requests a hearing as discussed below.

16. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

17. If the Respondent does not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a final Default Order may be issued against the Respondent pursuant to 40 C.F.R. § 22.17. A final Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by the Respondent without further proceedings, thirty (30) days after a final Default Order is issued.

18. The Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

19. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

20. The Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. § 22.50 through § 22.52.

21. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the

requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

22. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

23. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Dr. Abu Senkayi at (214) 665-8403.

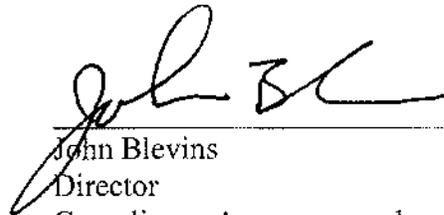
24. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent’s right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a

hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

25. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

2-25-13

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Fred Lueck
AzTex Dairy, Inc.
P.O. Box 159
Dublin, TX 76446

Copy: Ms. Susan Johnson (MC 169)
Manager, Enforcement Section I
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Copy hand-delivered: Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Dated: **MAR 04 2013**

