



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

SEP 30 11:57

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

SEP 30 2009

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

Re: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-03-2009-0292

Mr. and Mrs. Hudyma and Representatives of Mountaire Farms:

Enclosed please find an Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") filed against Andrew and Yvette Hudyma and Mountaire Farms of Delaware, Inc. ("Respondents") under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section 1319(g). The Complaint alleges that Respondents have violated Section 301(a) of the Act. The violations alleged by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, ("Complainant" or "EPA") are specifically set out in Section II of the Complaint.

An Answer must be filed within thirty (30) days of receipt of the Complaint 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,*" 40 C.F.R. Part 22, a copy of which is enclosed. The Answer must respond specifically to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice with specific answers within the thirty (30) days will constitute an admission of the allegations made. Failure to Answer may result in the entry of a Default Order imposing the proposed penalties without further proceedings.

You have the right to request a hearing to contest any matter set forth in the Complaint. Such request must be included with your Answer to this Complaint. Whether or not you request a hearing, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:



Pamela J. Lazos
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215/814-2658

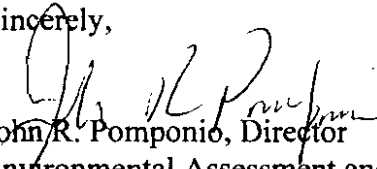
Please note that requesting a settlement conference does not affect in any way the obligation to file an Answer within thirty (30) days.

In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

Finally, to help you determine whether your company is a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), enclosed is a copy of the SBREFA Fact Sheet. This Fact Sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the Fact Sheet, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all the rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

A copy of the regulations governing the procedures for assessing an administrative penalty are enclosed.

Sincerely,


John R. Pomponio, Director
Environmental Assessment and Innovation Division

Enclosure

cc: EPA - Peter Stokely, OECA
COE - Sandy Zelan, MD
MDE - Dave Pushkar

**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

Property identified as on the west side of
Green Lewis Road, ½ mile from the
intersection with New Hope Road and
northeast of the town of Willards,
Wicomoco County, Maryland

Proceeding to Assess a Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2009-0292

**ADMINISTRATIVE COMPLAINT
and NOTICE OF OPPORTUNITY
REQUEST HEARING**

I. STATUTORY AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Environmental Assessment and Innovation Division ("Complainant").

II. ALLEGATIONS

2. Respondents, Andrew and Yvette Hudyma (the "Hudymas" or "Respondents") are the owners of property on the west side of Green Lewis Road, ½ mile from the intersection with New Hope Road, northeast of the town of Willards, Wicomoco County, Maryland, as further identified on the attached map labeled as Exhibit "A", (hereinafter "the Site").

3. Respondent, Mountaire Farms of Delaware, Inc., is a subsidiary of Mountaire Corporation, and, therefore, a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. The Site contains an unnamed ditch which flows to the Murray Branch which flows to the Burnt Mill Branch, which flows to the Pocomoke River, which flows to the Chesapeake Bay. Therefore, the unnamed ditch constitutes a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
5. Prior to signing a contract to purchase the Site in 2005, the Hudymas met with Bill Massey, the housing director for Mountaire regarding whether the Site was suitable for raising chickens. Mr. Massey stated he would check with Mountaire's environmental department, and later told them that the property was suitable. At a second meeting on Site, the Hudymas renewed their concerns regarding their inexperience as to raising chickens. Mr. Massey assured them that he would help in overseeing the construction and even recommended several builders, including Northeast Construction, recommended a surveyor, and referred the Hudymas to a lender.
6. Mr. Hudyma contracted with Northeast Construction and began, according to the terms of the contract with Northeast, making inquiries into the necessary building and zoning permits. Also at this time, Mountaire performed an internal analysis entitled "Farm Environmental Evaluation Form ("FEEF") by which the company determined whether the proposed Site was suitable for the construction of chicken houses. The FEEF had a category called "sensitive receptors" which included "wetlands." After plugging the information into the FEEF and reviewing the USGS topographical map of the Site, Mr. Massey concluded there were no wetlands on Site and shared this information with the Hudymas.
7. Mr. Massey procured the initial information and passed it along to Jeffrey Smith, Mountaire's environmental manager. Mr. Smith, in turn, reviewed U.S. Geological Survey ("USGS") topographical maps of the Site to locate symbols for swamps or bogs which he considered synonymous with non-tidal wetlands ("NTW"). Both he and Mr. Massey concluded that there were no wetlands, non-tidal or otherwise, in close proximity to the proposed construction Site.
8. In February 2006, the Hudymas took title to the property as tenants by entirety. In March 2006, Mr. Massey, and representatives of Northeast met and determined construction at the Site could begin.
9. In June 2006, Northeast began construction and the Hudymas procured a \$700,000 loan to finance it. Prior to providing the loan, MidAtlantic Farm Credit contacted Mr. Massey

- to get a letter of intent from Mountaire indicating that they would be the integrators for the Hudymas. Mr. Massey continued to visit the Site and at one point noted that one of the concrete footers on one of the chicken houses was defective which was subsequently replaced.
10. In mid-June of 2006, Northeast advised the Hudymas that they needed a permit from the Maryland Department of the Environment ("MDE") before they could put a chicken manure shed on the property. When the MDE inspector looked at the Site, he noted NTW on the property.
 11. On January 8, 2007, Northeast filed a Complaint in the Circuit Court for Wicomico County Maryland (Case No. C07-24) against the Hudymas and Mountaire for payment of monies allegedly owed to Northeast for work done on the Hudyma property. The Hudyma's filed a third-party complaint against Mountaire on April 16, 2007.
 12. A trial was held in the Circuit Court on November 20 and 21, 2007. The court found that "Mountaire, through its agents, affirmatively represented to the Hudymas that its environmental department would investigate those aspects of the site location." Further, "Mountaire . . . presented itself as having expertise in the location of NTW," and the "Hudymas reasonably relied on this "expertise."
 13. Further, the court found that Mountaire "negligently misrepresented to the Hudymas that the construction could proceed, when in fact, it lawfully could not. Mountaire knew or reasonably should have known that the Hudymas would rely on the findings of its environmental department based upon the relationship between Messrs. Massey and Hudyma."
 14. Mountaire, by directing the Hudymas to construct their chicken houses in waters of the U.S. caused and/or contributed to the unauthorized filling of wetlands at the Site.
 15. Commencing in or about July 2006, Respondents, or persons acting on behalf of Respondents, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site as described in Paragraph 4, above, and further depicted on Exhibit "A," attached hereto. Respondents' activities included the filling of approximately 3.64 acres of forested, NTW for the purpose of constructing chicken houses.
 16. The term "fill material", within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces any portion of a "water of the United States" with dry land or which changes the bottom elevation of a water body for any purpose. The fill material placed by Respondents in order to build the chicken houses changed the bottom elevation of the wetlands.

17. The fill material discharged to the wetlands was a “pollutant” pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
18. The equipment referenced in Paragraph 15, above, which discharged the fill material to “navigable waters” which are “waters of the United States,” constitutes a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from point sources to waters of the United States except in compliance with, among others, a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
20. At no time during the discharge of dredged and/or fill material to the waters of the United States described in Paragraph 5, above, did the Respondents have a Section 404 permit.
21. Respondents, by discharging dredged and/or fill material to the waters of the United States without a permit, have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
22. Under Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each day of violation.
23. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA is providing public notice and an opportunity to comment on the Complaint. In addition, pursuant to Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the State of Maryland, Maryland Department of the Environment (“MDE”) regarding this action, and in addition, EPA will mail a copy of this document to the appropriate MDE official and offer an opportunity for the MDE to consult further with EPA on this proposed penalty assessment.

III. PROPOSED CIVIL PENALTY

24. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of \$82,500. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
25. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondents’ prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations, all factors identified at Section

309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

26. The Regional Administrator may issue the Final Order Assessing Administrative Penalties unless Respondents either respond to the allegations in the Complaint and request a hearing according to the terms of Section VI., below, or pay the proposed penalty in accordance with Section V., below.

IV. SETTLEMENT CONFERENCE

27. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondents may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondents of the responsibility to file a timely Answer to the Complaint.**

28. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

29. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Pamela J. Lazos, Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2658 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Ms. Lazos on your behalf. Once again, however, such a **request for a settlement conference does not relieve the Respondents of the responsibility to file an Answer within thirty (30) days following Respondents' receipt of this Complaint.**

V. QUICK RESOLUTION

30. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondents may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondents pay the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

31. If Respondents wish to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondents may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondents agree to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the:

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

and a copy shall be provided to

Pamela J. Lazos (3RC20)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street, Philadelphia, PA 19103-2029.

Within sixty (60) days of receiving the Complaint, Respondents shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondents to default pursuant to 40 C.F.R. § 22.17.

32. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer, Division Director, or Regional Administrator shall issue a final order. Payment by Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the final order.
33. Payment of the penalty shall be made by sending a certified or cashier's check made payable to the Treasurer of the United States of America, in care of:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If sending by UPS, Federal Express or Overnight Mail:

U.S. Bank
Government Lockbox 979077

US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Copies of the check shall be mailed at the same time payment is made to:

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

and to:

Pamela J. Lazos (3RC20)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VI. OPPORTUNITY TO REQUEST HEARING

34. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
35. At the hearing, Respondents may contest any material fact contained in the allegations listed in Section II, above, and the appropriateness of the penalty amount in Section III, above.
36. Hearing procedures are described in 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,*" 40 C.F.R. Part 22, a copy of which is enclosed.
37. A Request for Hearing and the Answer to this Complaint must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street

Philadelphia, PA 19103-2029

38. Copies of the Request for Hearing and the Answer along with other documents filed in this action should also be sent to the following:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215/814-2658

Failure to file an Answer may result in entry of a default judgment against Respondents. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondents' failure to fully pay the entire penalty, assessed by the Default Order, by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

39. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondents have any knowledge, or clearly state the Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:

1. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
2. the facts which Respondents dispute;
3. the basis for opposing any proposed relief; and
4. whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

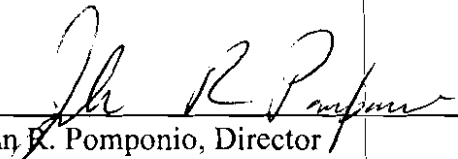
40. If Respondents request a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable

opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), who have commented upon the proposed penalty assessment, will have an opportunity, pursuant to Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

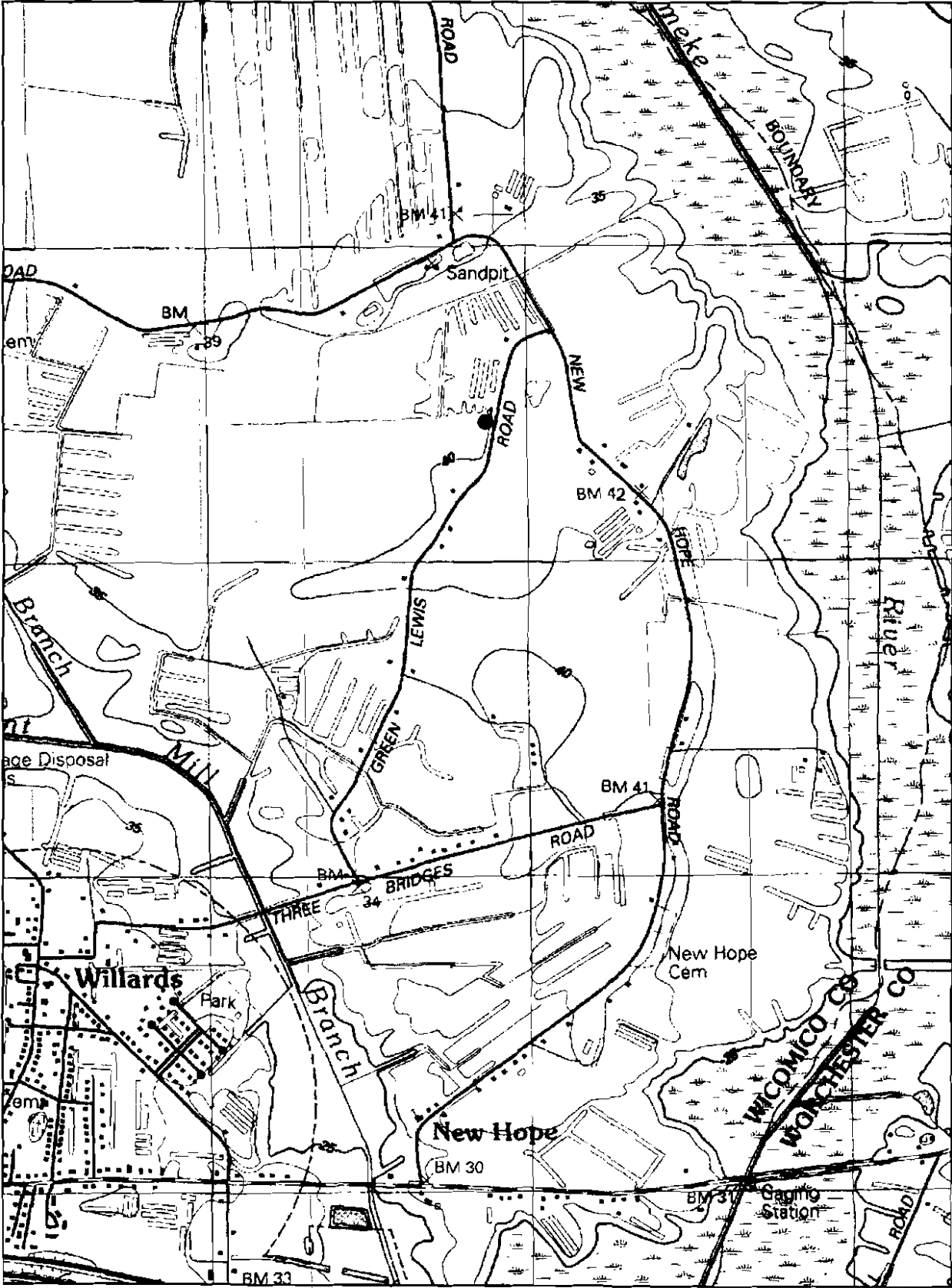
41. Please be advised that the rules governing these proceedings prohibit any unilateral discussion of the merits of a case with, inter alia, the Administrator, the members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.
42. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondents' continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

Date:

9/30/09



John R. Pomponio, Director
Environmental Assessment and Innovation Division
U.S. Environmental Protection Agency, Region III



CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Administrative Complaint, Notice of Proposed Order Assessing a Civil Penalty and Notice of Opportunity to Request a Hearing Thereon," and a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, to the following persons:

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

and

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

with copies to:

Shari T. Wilson, Secretary of the Environmet
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

and a copy delivered by hand to:

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

Date: 9/30/09



Pamela Lazos
Sr. Asst. Regional Counsel



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

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RETURN RECEIPT REQUESTED

SEP 30 2009

Shari T. Wilson, Secretary of the Environment
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

RE: In the Matter of Andrew Hudyma and Yvette Hudyma, et. al,
Notice of Proposed Administrative Penalty Assessment
EPA Docket No. CWA-03-2000-0292

Dear Secretary Wilson:

Enclosed is a copy of an Administrative Complaint which the U.S. Environmental Protection Agency, Region III ("EPA") has issued to Andrew and Yvette Hudyma and Mountaire Farms of Delaware, Inc., pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the unauthorized discharge of a pollutant to waters of the United States. With this Complaint, EPA proposes to begin the process of assessing a civil penalty of \$82,500 against the Respondents.

Since the violations have occurred in Maryland, EPA is providing you with an opportunity to confer with EPA officials regarding the proposed assessment. You may request an in-person or telephone conference within thirty (30) days of receipt of this letter. To request a conference or to make any other inquiries, call or write to:

Pamela Lazos (3RC20)
Sr. Asst. Regional Counsel
U.S. Environmental Protection
Agency--Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215/814-2658

Todd Lutte (3ES30)
Wetlands Enforcement
U.S. Environmental Protection
Agency--Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215/814-2099