

4. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

5. "Point Source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation...from which pollutants are or may be discharged."

6. "Animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

7. "Concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that meets the definition of a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).

8. "Large CAFO" defined at 40 C.F.R. § 122.23(b)(4)(ix) includes an animal feeding operation that stables or confines as many as or more than 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system (40 C.F.R. §122.23(b)(4)(ix)).

9. "Waters of the United States" are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.

10. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) to mean that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

11. "Process wastewater" is defined in 40 C.F.R. § 122.23(b)(7) as water "directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities...Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding."

12. The Delaware Department of Natural Resources and Environmental Control ("DNREC") is the agency within the State of Delaware which is authorized to administer the Federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs to address violations of the CWA.

II. EPA'S FINDINGS OF FACT

EPA makes the following findings of facts:

13. The Respondent owns and operates an animal feeding operation, known as the "Kaufman Chicken Ranch" also referred to herein as the "Facility" located at 2714 Wild Turkey Road, Seaford, Sussex County, Delaware. The Kaufman Chicken Ranch is identified in Sussex County land records as Parcel ID 53100800000900, PIN 531-8.00-9.00.

14. On April 5, 2007, EPA and its representatives conducted an inspection of the Kaufman Chicken Ranch, which included the taking of samples.

15. At the time of the EPA inspection, Respondent did not have an NPDES Permit.

16. Respondent is certified as a nutrient generator, by Delaware's Nutrient Management Program, whose Delaware Department of Agriculture ("DDA") Certification Number is 0176.

17. According to the Delaware Nutrient Management Certification Regulations to qualify for a Certified Nutrient Generator "the applicant must take and successfully complete at least 6 credits of educational coursework as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application."

18. On April 16, 2007, Respondent signed a Notice of Intent ("NOI") and Application for Coverage, which he submitted to DDA.

19. On April 16, 2007, DDA issued a letter to Respondent identifying areas where Respondent should improve his nutrient management practices.

20. Respondent raises roaster chickens at the Kaufman Chicken Ranch, currently under contract with Allen's Hatchery, Inc.

21. Allen Family Foods, Inc., is a closely-held corporation, which operates as part of a vertically-integrated poultry operation, along with Allen's Hatchery, Inc., and Allen's Milling Company, referred to collectively herein as "Allen's."

22. Respondent raises in excess of 80,000 chickens per year, storing them in the four enclosed poultry houses located on the Facility, for a total of 45 days or more in any twelve-month period.

23. The Kaufman Chicken Ranch contains four poultry houses, manure shed with a storage capacity of approximately 500 tons, and mortality composting shed.

24. An Allen's flock supervisor routinely visits Kaufman Chicken Ranch. According to the Allen Family Foods, Inc. website, Allen "flock supervisors monitor the chicks at every stage of their growth." Additionally, the Allen Family Foods, Inc., website states that "We consult with growers frequently on bird health and well being, as well as bird waste management."

25. Allen's, which owns the chickens, delivers newborn chicks to the Kaufman Chicken Ranch, provides feed for its chickens, monitors their growth and mortality, collects the chickens when they have grown to desired size, and transports them from the Kaufman Chicken Ranch to an Allen's owned facility for processing.

26. Following the removal of the chickens by Allen's, Respondent prepares the chicken houses for the next flock of chicks, to be provided by Allen's approximately three weeks later. During this time period between flocks, Respondent performs either a partial clean out of the chicken houses, called a "crust out", or a full house clean out, called a "full clean out."

27. Respondent conducted a full clean out of all poultry houses on February 5, 2007, after which Allen's provided Respondent with bedding material for Respondent's four chicken houses.

28. Respondent retains a contractor to perform full clean outs. During the full clean outs, half the litter of each house is piled at the rear of each house and half at the front of each house.

29. According to Respondent, at the time of the February 5, 2007 full clean out, the Manure Shed was full and therefore Respondent stored the manure piles outside until they could be removed by a crop farmer for land application at a different farm.

30. According to Respondent, a crop farmer came to the Kaufman Chicken Ranch on April 3, 2007, to begin to gather and remove all of the litter from the Kaufman Chicken Ranch, but was unable to remove all of the litter due to rain that occurred on April 4, 2007.

31. Respondent told EPA's inspectors that a thunder storm on April 4, 2007 dropped approximately two inches of rain on the Kaufman Chicken Ranch. Additionally, a weather station in Georgetown, Delaware, approximately 15 miles from the Facility, reported 0.93 inches of rainfall on April 4, 2007; and a weather station in Laurel, Delaware, approximately 10 miles from the Facility, reported 0.75 inches of rainfall on same day.

32. On February 16, 2007, EPA representatives drove by the Respondent's Facility and observed a long, uncovered pile in the facility's Production Area on the northern side of House 3, later confirmed by EPA to be chicken litter.

33. On March 16, 2007, EPA representatives drove by the Respondent's Facility and again observed a long, uncovered pile located in the Facility's Production Area on the northern side of House 3.

34. On April 3, 2007, EPA inspectors drove by the Kaufman Chicken Ranch and observed for the third time the presence of the long, uncovered pile located in the Facility's Production Area on the northern side of House 3.

35. During the EPA inspection of April 5, 2007, EPA inspectors and representatives observed remnants of the long, uncovered pile located on the northern side of House 3, referred

to above and determined that it was litter. Based upon EPA's observations, the manure pile located on the northern side of House 3 was uncovered and exposed to weather conditions for at least 49 days.

36. A drainage swale is located between House 2 and House 3, near the manure shed. The drainage swale conveys water and wastes that pass through a pipe and drains in a westerly direction towards the unnamed tributary of the Horse Pen Branch.

37. EPA inspectors and representatives also observed evidence, including a circular pattern and dark material inconsistent with the adjacent soil, indicating a manure pile had been located at the western end of House 4, as identified on the aerial photograph attached hereto as Exhibit A. EPA took samples in and around the location of area where the former litter pile had been located at the western end of House 4, confirming the presence of nitrogen and phosphorus.

38. The ground behind the western side of House 4 slopes downwards towards an unnamed tributary of the Horse Pen Branch. The unnamed tributary of the Horse Pen Branch is located along the western portion of the Kaufman Chicken Ranch property. The unnamed tributary of the Horse Pen Branch flows to the Horse Pen Branch. The Horse Pen Branch flows into the Butler Mill Creek and the Butler Mill Creek in turn flows into the Nanticoke River.

39. On April 5, 2007, EPA's inspectors and representatives observed drainage patterns in the soil and sediment behind the western end of House 4 leading toward the unnamed tributary of the Horse Pen Branch.

40. At the time of the inspection the Facility did not have any structures to prevent the discharge of contaminated stormwater which is considered to be process wastewater from the Facility.

III. EPA'S CONCLUSIONS OF LAW

41. Respondent is an individual and therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

42. Respondent owns and operates the Facility.

43. The Facility stables or confines in an enclosed barn, in excess of 30,000 chickens for a total of 45 days or more in any twelve-month period.

44. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).

45. Respondent stored manure outside in uncovered piles for at least 45 days. Therefore, Respondent's facility utilizes a liquid manure handling system.

46. The Respondent's Facility confines at least 30,000 chickens and uses a liquid manure handling system. Therefore the Facility is a Large CAFO, as that term is defined in

40 C.F.R. § 122.23(b)(4).

47. Respondent's Facility is a "point source" as defined by CWA Section 502(14), 33 U.S.C. § 1362(14).

48. Respondent did not at the time of the inspection have an NPDES Permit for the Facility.

49. The unnamed tributary to the Horse Pen Branch is a water of the United States, as defined by 40 C.F.R. § 122.2. Alternatively, the unnamed tributary to the Horse Pen Branch is a point source conveyance leading to a water of the United States.

50. On information and belief, based on the evidence of the outdoor storage of chicken litter on the ground behind the western end of House 4, its proximity to the unnamed tributary to the Horse Pen Branch, the slope and condition of the land between the site of the former litter pile and the unnamed tributary to the Horse Pen Branch, as well as the visually observed drainage patterns in the soil and sediment, pollutants from the litter pile that had been located on the ground behind the western end of House 4 discharged into the unnamed tributary to the Horse Pen Branch on April 4, 2007.

51. Process wastewater and/or manure containing pollutants flowed from the manure pile located on the ground behind the western end of House 4 and ultimately discharged into the unnamed tributary to the Horse Pen Branch without an NPDES permit. This flow constituted an unauthorized discharge of pollutants from a point source to waters of the United States violating Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and implementing regulations.

IV. GENERAL PROVISIONS

52. For the purpose of this proceeding:

- a. Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order;
- b. Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement and Final Order;
- c. Respondent consents to the assessment of the civil penalty set forth herein;
- d. Respondent agrees to undertake all actions required by this Consent Agreement and Final Order;
- e. Respondent hereby expressly waives his right to contest the allegations set forth in this Consent Agreement and Final Order at a hearing under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A); and
- f. Respondent waives his right to appeal this Final Order under

Section 309(g)(8)(A) of the CWA, 33 U.S.C. § 1319(g)(8)(A).

53. This Consent Agreement and Final Order shall not relieve Respondent of his obligations to comply with all applicable provisions of federal, state or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 and 404 of the CWA, 33 U.S.C. §§ 1342 and 1344, or any other law. Moreover, Respondent agrees to comply with the applicable requirements of the CWA.

54. This Consent Agreement and the accompanying Final Order, resolves the civil claims against the Respondent for the specific violations alleged herein. EPA reserves the right to commence an 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 Consent Agreement and Final Order, following its effective date.

55. This Consent Agreement and Final Order is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this Consent Agreement and Final Order. That 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.

56. All of the terms and conditions of this Consent Agreement and Final Order 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 Consent Agreement and Final Order 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 Consent Agreement and Final Order shall be null and void.

V. PENALTY

57. For the purpose of this proceeding, the Respondent's consent to the assessment of a civil penalty (the "Civil Penalty") in full and complete settlement of EPA's civil claims as set forth in the Complaint alleging the violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, in the amount of one thousand five hundred dollars (\$1,500).

VI. PAYMENT TERMS

58. Respondent shall pay the Civil Penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.31(c), by cashier's or certified check, payable to the "Treasurer, United States of America." Payment shall be mailed to the following address:

U.S. EPA
P.O. Box 360515
Pittsburgh, PA 15251-6515

59. Respondent shall note on the penalty payment check the title and docket number of this case.

60. Respondent shall submit notice of payment, along with a copy of the check to:

Regional Hearing Clerk (3R00)
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

with copies sent to:

Andrew Duchovnay (3RC20)
Sr. Asst. Regional Counsel
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

61. 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 Consent Agreement and Final Order 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 Consent Agreement and Final Order will begin to accrue on the date that a copy of this Consent Agreement and Final Order 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). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge, not to exceed six percent, 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).

VII. EFFECTIVE DATE

62. Pursuant to 40 C.F.R. § 22.45, this Consent Agreement and Final Order shall be issued after a 40-day public notice period has concluded. This Consent Agreement and Final Order will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT:



Henry J. Kaufman, Jr., Owner
Kaufman Chicken Ranch

12-13-08
Date

SO ORDERED BY:



Jon M. Capacasa, Director
Water Protection Division

4.16.09
Date

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

In The Matter of)
)
)

HENRY J. KAUFMAN, JR.)
)
)

Respondent)
)
)

Regarding property known as the)
Kaufman Chicken Ranch located at)
2714 Wild Turkey Road,)
Seaford, Delaware 19973-5003)

Docket No. CWA-03-2009-0001

CERTIFICATE OF SERVICE

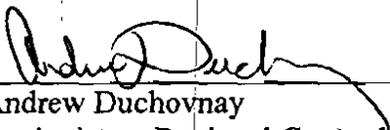
I hereby certify that on this date I caused to be sent the original of the attached Consent Agreement and Final Order, delivered by hand to the:

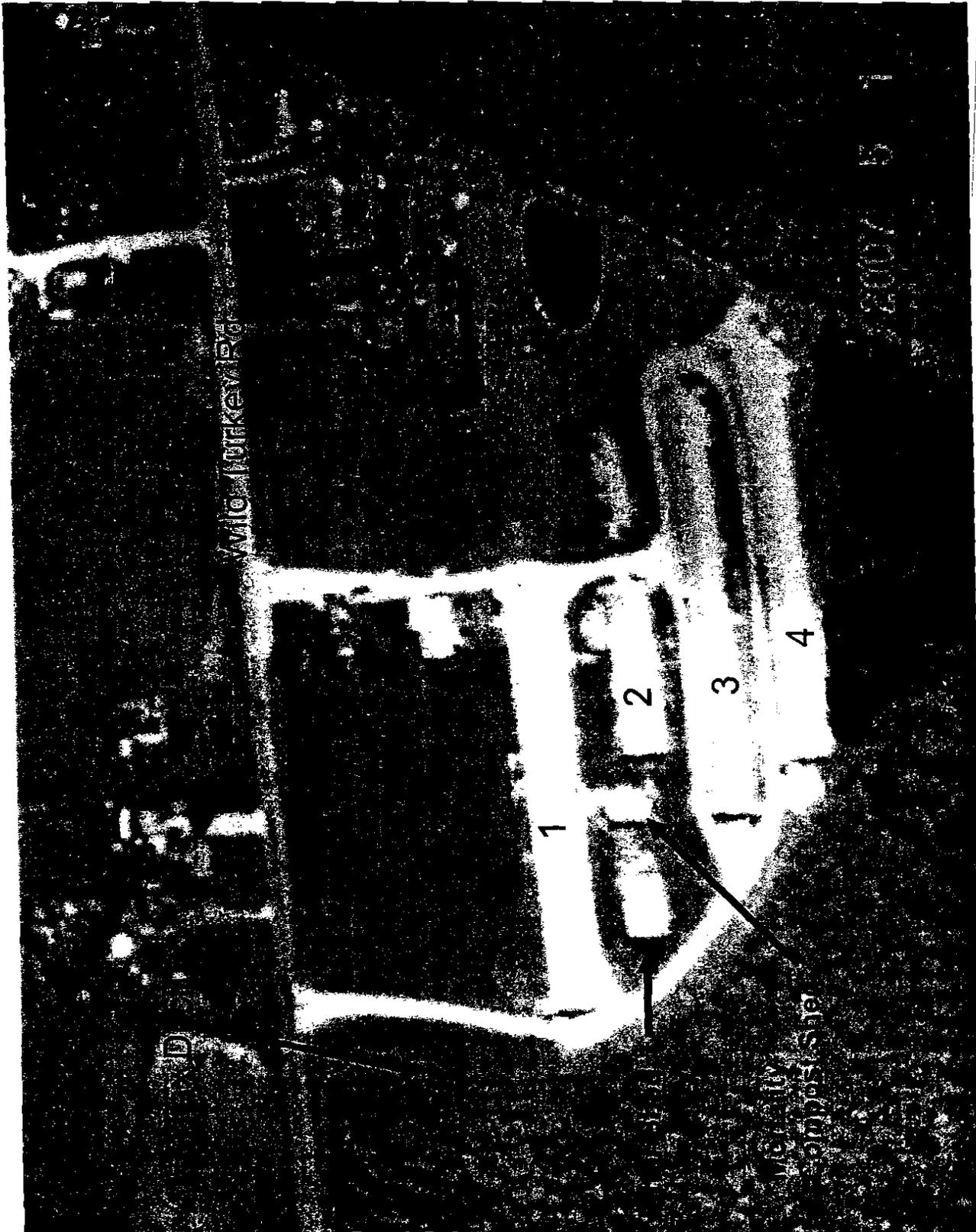
Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

and with copies to the following at the addresses listed below, via regular, First Class mail:

Mr. Henry J. Kaufman, Jr.
2714 Wild Turkey Road
Seaford, DE 19973-5003

Date: 4/21/09


Andrew Duchovnay
Sr. Assistant Regional Counsel



Site Map of Mr. Kaufman's Poultry Operation