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February 22, 2011

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

RE: Answer to the Complaint
Feather Crest Farms, Inc.
Notice of Proposed Assessment of Class II Civil Penalty
Docket Number: CWA-06-2011-1702
Draft CAFO Docket Number: CWA-06-2011-1702
Permit Number: TXG920363

To Whom It May Concern:

As the authorized representative of Feather Crest Farms, Inc. this Answer to the Complaint relative to the referenced matter is hereby filed. The complaint was dated January 25, 2011 and received on January 31, 2011 by Feather Crest Farms, Inc.

Feather Crest Farms, Inc. (Respondent) provides the following answers to the Administrative Complaint listed in the order as followed in the Administrative Complaint:

I. Statutory Authority

- Paragraph 1 – agreed.
- Paragraph 2 – Respondent denies any violation of the Act and the regulations promulgated under the Act and denies that a civil penalty should be ordered. Respondent denies any violation of the Act and the regulations promulgated under the Act on the basis of the fact there is no specific evidence that contaminated runoff actually occurred on the days alleged by EPA or on any other days. Respondent denies that a civil penalty should be ordered on the basis of the fact there is no actual evidence that runoff actually occurred on the days alleged by EPA or on any other days and furthermore there is no actual evidence known to the respondent that proves any runoff off to or detrimental impact on waters of the U.S.

II. Findings of Fact and Conclusions of Law –

1. Agreed.
2. Agreed.
3. Respondent denies the facility is a "point source" of a "discharge" of "pollutants" with its process-generated wastewater and storm water runoff from land

application fields to receiving waters of the Navasota River. Respondent makes this denial on the basis that there is no actual evidence that any "discharge" of a "point source" of "pollutants" from land application fields has ever occurred to receiving waters of the Navasota River or that the actions of the Respondent have in any way negatively impacted the water quality of the receiving waters of the Navasota River or impaired the designated uses of the receiving waters of the Navasota River.

4. Respondent denies it owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States on the basis of the fact that there is no actual evidence that the discharge of pollutants to waters of the United States occurred on the dates alleged by EPA or on any other dates.
5. Agreed as a point of law.
6. Agreed as a point of law.
7. Agreed as a point of law.
8. Respondent stipulates that it did inadvertently land apply wastewater on LMU's 8, 12A, and 12B which have soil phosphorus concentrations of over 200 ppm without a formally TCEQ-approved NUP due to the fact that Respondent did not clearly understand this specific requirement of the rule which the Respondent understands actually did not apply until reissuance of the TCEQ CAFO permit in November, 2009. However, Respondent denies that said application(s) exceeded the spirit of the regulations because the application rates were well below those that would have been allowed by a TCEQ-approved NUP. Specifically:
    i. The Nutrient Management Plan for the facility allows for the following annual application volumes for the named LMU's:
        1. LMU 8 (22.1 acres) – 55,142 gallons per acre per year – 1,218,638 gallons per year
        2. LMU 12A (40.3 acres) – 36,761 gallons per acre per year – 1,481,468 gallons per year
        3. LMU 12B (32.4 acres) – 55,142 gallons per acre per year – 1,786,601 gallons per year
    ii. The actual application volumes applied to the named LMU's for calendar years 2009 and 2010 were:
        1. LMU 8 – 2009 (0 gallons per year); 2010 (81,000 gallons)
        2. LMU 12A – 2009 (245,760 gallons per year); 2010 (0 gallons)
        3. LMU 12B – 2009 (245,760 gallons per year); 2010 (0 gallons)
    iii. While applicant now understands the requirement to have a TCEQ-approved NUP before land application occurs on any LMU with a soil phosphorus of over 200 ppm and is and will comply with this requirement, in actual practice applicant did not exceed applications that would have been allowed by a TCEQ-approved NUP and thus only administratively failed to comply with the letter of the law. Respondent argues that controlling application rates at levels below those that would be allowed by a TCEQ-approved NUP is protective of the environment whether or not the NUP has actually been reviewed by TCEQ or not. Respondent contends it is patently unfair to say it is ok to land apply the maximum amount allowed by a NUP so long as you have gotten "approval" but it is not acceptable to apply far less than a NUP would allow when an oversight occurs for the first time and it is brought to the

attention of the facility and is corrected. In making the statement, "Any runoff from phosphorus-saturated land application fields which enters a water of the United States is an unauthorized discharge because such runoff does not meet the agricultural storm water exemption" and applying the philosophy as it has as the basis to issue this Administrative Complaint to Respondent EPA appears to take the position that approval of a document in itself controls whether runoff from a given LMU meets the definition of an unauthorized discharge or not. In other words if a field has a soil phosphorus level of over 200 ppm and a TCEQ-approved NUP authorizes application of 50,000 gallons per acre and 50,000 gallons per acre is applied no contaminated runoff is assumed to have occurred. On the other hand if the same field has a soil phosphorus level of over 200 ppm and only 10,000 gallons per acre is applied without a TCEQ-approved NUP contaminated runoff is assumed to necessarily have occurred and thus the agricultural storm water exemption assumed to have not been met. This approach to interpretation of the regulations places the importance of paper over that of actual practice in the field. Respondent has stipulated it did not clearly understand the regulations and has complied with EPA's order to comply with the regulation related to land application on LMU's with soil phosphorus above 200 ppm. Given this is the first occurrence of this situation related to Respondent, Respondent respectfully requests that EPA consider the actual application rates that were in conformance with what an approved NUP would have allowed and lessen the burden placed on Respondent in the final resolution of this matter.

9. Respondent denies that during each of the rainfall events noted under Item 8 of the Administrative Complaint that the facility illegally discharged contaminated storm water runoff from each of the land application fields with a soil phosphorus concentration greater than 200 ppm into nearby waters of the United States on the basis of the fact that there is no actual evidence that proves that any runoff actually occurred on the dates noted or that any runoff that might have occurred was contaminated. Furthermore, Respondent denies that the facility's permit "specifically" prohibits land-applying manure to LMU's 12A, 12B, and 8 and also denies that manure has been applied to LMU's 12A, 12B, and 8 to the extent EPA may be alleging that land application of manure occurred to the named LMU's.
10. Agreed.
11. Agreed as to point of law. For the reasons outlined herein related to actual application rates to the LMU's in question in this Administrative Complaint Respondent believes the range of potential penalties listed by EPA are grossly excessive given the first time nature of the alleged issue and appeals to EPA's reason in the final resolution of this matter.
12. Understood.
13. Understood.

III. Proposed Penalty

14. Respondent respectfully submits that the proposed penalty of $70,000 is

grossly excessive for the matter addressed in the Administrative Complaint. Respondent has stipulated an inadvertent misunderstanding of the rules but has demonstrated that actual application rates were below those that would have been allowed had a TCEQ-approved NUP been in place at the time of the application(s). Respondent has already complied with EPA's order to not land apply on LMU's with soil phosphorus over 200 ppm without a TCEQ-approved NUP and has put actions in place to assure future compliance. Respondent has acted in good faith immediately upon being notified by EPA of the regulatory requirement addressed in the Administrative Complaint and believes since this is the first occurrence of this situation and there is no actual evidence that proves Respondent has impacted waters of the United States negatively that no penalty should be placed on Respondent.

15. If EPA continues to contend a monetary penalty should be imposed on Respondent, Respondent requests to see the calculations on which EPA based the penalty amount. Respondent does not believe that any of the factors listed by EPA rise to any level which would in any way justify a penalty of $70,000 for this first time issue based on a lack of understanding of the regulations that was not manifested in the actual over application of volumes that would have been allowed by a TCEQ-approved NUP but rather an administrative paper work issue.

IV. Failure to File an Answer

16. Understood. This document constitutes Respondent's Answer to the Complaint.
17. Understood.
18. Understood.
19. Done as directed.
20. This Answer to the Complaint is signed by Vernon D. Rowe, P.E. as the Respondent's authorized representative.

Respondent's Address is:

Feather Crest Farms, Inc.
801 North Earl Rudder Freeway
Bryan, Tx 77802

Respondent's Telephone Number: (979) 703-8510

Respondent's Counsel:

Allen Beinke
611 South Congress Ave., Suite 340
Austin, Texas 78704
(512) 479-8162

V. Notice of Opportunity to Request a Hearing

21. Respondent hereby requests a hearing to contest the allegations made in the Administrative Complaint and to contest the appropriateness of the amount of the proposed penalty.
22. Request for hearing is included under Item V.21. of this Answer to the Complaint.
23. Understood.

VI. Settlement

24. Respondent desires to settle this matter and has scheduled informal discussions with EPA.
25. Understood.
26. Understood to the extent this Item does not subject Respondent to undue "double jeopardy" for the unjust allegations made in the Administrative Complaint.

If additional information is needed please advise.

Very truly yours,

Vernon D. Rowe, P.E.
Environmental Consultant to Feather Crest Farms, Inc.

Cc: Ms. Ellen Chang-Vaughn (6RC-EW)
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