



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

FEB 08 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7005 1820 0003 7449 0008

Mr. Chad Foust, Owner
Foust Dairy
3933 Woodard Avenue
Cleburne, TX 76033

Re: Administrative Order on Consent
Docket Number: CWA-06-2018-1730
NPDES Permit Number: TXG921173

Dear Mr. Foust:

Enclosed is an Administrative Order on Consent (AOC) that includes your proposed activities and timeline for addressing all issues related to the Administrative Order issued to you by the Environmental Protection Agency, Region 6 ("EPA") on July 6, 2017 (CWA-06-2017-1762). If you do not have any concerns with the AOC, please sign the AOC and return it, with original signature, to the attention of Ms. Ellen Chang-Vaughan (6RC-EW) within ten (10) days of receipt of the AOC.

If you have any questions regarding this matter, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403.

Sincerely,

A handwritten signature in black ink, appearing to be "Cheryl T. Seager".

Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

1445 Ross Avenue, Suite 1200, Dallas, TX 75202

FINDINGS OF VIOLATION AND COMPLIANCE ORDER

In the Matter of Foust Dairy, Respondent

Docket Number: CWA-06-2018-1730

FILED

2018 MAR -5 PM 1:30

REGIONAL HEARING CENTER
EPA REGION VI

STATUTORY AUTHORITY

The following findings are made, and Order issued, under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Section 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §1319(a). The Administrator of EPA delegated the authority to issue this Administrative Order on Consent to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division.

In response to EPA's AO, Respondent submitted a plan dated November 10, 2017, which was received on November 17, 2017. The plan included proposed activities and a schedule/timeline for addressing all the alleged violations specified in the AO. The schedule timeline and activities proposed in this plan are hereby incorporated into this AOC as described in the next section below.

FINDINGS

SECTION 309(a)(3) COMPLIANCE ORDER

1. Foust Dairy ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

Pursuant to the authority of Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), EPA orders Respondent to implement the activities proposed in the facility's plan submitted to EPA in accordance with the following schedule/timeline:

2. At all relevant times, the facility acted as a "point source" of a "discharge" of "pollutants" with its process wastewater to receiving waters of Lake Pat Cleburne, which is a "water of the United States." As a result, Respondent and the facility were subject to the Texas Pollutant Discharge Elimination System ("TPDES") concentrated animal feeding operation ("CAFO") permitting program.

1. **RCS Operation and Maintenance** – Effective immediately, Respondent shall begin compiling and maintaining records to document that the RCS has adequate capacity to contain all waste and process wastewater plus runoff during the 25-year, 24-hour storm event, as required by the facility's CAFO permit.

3. Respondent applied for and was issued a CAFO permit by the Texas Commission on Environmental Quality ("TCEQ"), Permit Number TXG921173, which became effective on May 27, 2011. 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 NPDES permitting and enforcement program.

2. **Liner Protection and Maintenance** – Within thirty (30) days of the effective date of this Order, Respondent shall hire a Licensed Texas Professional Engineer to evaluate whether or not the trees observed growing on or near the RCS embankment have compromised the structural integrity of the RCS embankment or liner. In addition, Respondent shall conduct annual inspections to determine whether or not the trees observed growing on or near the RCS embankment have compromised the structural integrity of the RCS embankment or liner.

4. The facility is a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14). It is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a), for any person to discharge a pollutant from a point source to waters of the U.S. without a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

3. **Pen Maintenance** – Within forty-five (45) days of the effective date of this Order, Respondent shall repair all berms to ensure that storm water runoff from pen #1 flows into the RCS. Once the berms are repaired, Respondent shall compile documentation, including photographs and invoices, that will be submitted to EPA Region 6 as a part of a final report.

5. On July 6, 2017, EPA issued to Respondent an Administrative Order, Docket No. CWA-06-2017-1762 (AO). The violations alleged in the AO included the following: (a) improper operation and maintenance of the retention control structure ("RCS"), (b) allowing trees to grow on the RCS embankment which may compromise the integrity of the RCS liner.

4. **Proper Manure/Waste Feed Storage** – Within thirty (30) days of the effective date of this Order, Respondent shall ensure that all manure and feed waste are properly managed and stored to ensure that runoff from the storage areas flows into the RCS.

used on the foregoing Findings and pursuant to the authority of Section 309 of the Act, 33 U.S.C. § 1319, Respondent is required to do the following:

- a. Submit to EPA a final report documenting completion of all the proposed activities no later than 6 months from the effective date of this Order.
- b. Address the final report and all correspondence to:

Dr. Abu Senkayi
NPDES Compliance Section (6EN-WC)
EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Any written report sent to EPA in accordance with this Order will include the following statement:

I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

GENERAL PROVISIONS

This AOC is effective upon the signatures of representatives of the Respondent and the EPA. The AOC will remain in effect until all the action items listed within have been implemented no later than the timeframes set forth.

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Issuance of this Section 309(a)(3) Order on Consent shall not be deemed an election by EPA to waive any administrative or judicial, civil, or criminal action to seek penalties, fines, or other relief under the Act for the violations cited herein, or other violations that become known to EPA. EPA reserves the right to seek any remedy available under the Act that it deems appropriate.

Failure to comply with this Section 309(a)(3) Order on Consent, or the Act can result in further administrative action, or a civil judicial action initiated by the United States Department of Justice.

Compliance with the terms and conditions of this AOC does not relieve the Respondent of its obligation to comply with all applicable federal, state, or local laws or regulations.

This AOC constitutes final agency action.

The effective date of this Order is the date it is received by Respondent.

2-21-18

Date



Chad Foust, Owner/Operator
Foust Dairy

2/8/18

Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2018, the original of the foregoing Administrative Order on Consent was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy were addressed to the following:

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

Copy by mail: Chad Foust
Foust Dairy
3933 Woodard Ave.
Cleburne, TX 76033

Copy hand-delivered: Dr. Abu Senkayi (6EN-WR)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: March 5, 2018 Jackie Allen