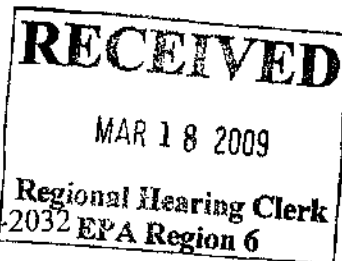


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6



In the Matter of

Ray Hoffman, Jr.
Ray Hoffinan, Jr. Dairy
Windthorst, Texas

Respondent

Facility Number TXU010871

§ Docket No. CWA-06-2008-2032
§
§ Proceeding to Assess a
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§
§ ADMINISTRATIVE COMPLAINT
§

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 (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "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 Procedures Act, 40 C.F.R. § 22.50-22.52.

Based on the following Findings, Complainant finds that 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. Ray Hoffman, Jr. (herein "Respondent") is doing business as Ray Hoffman, Jr. Dairy, and as such, the Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant, Respondent owned or operated a dairy (herein "the facility") located about 5 miles west of Windthorst, off Highway 25, about ½ mile south on Munchrath Road, in Archer County, Texas, and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" to Little Onion Creek, which eventually discharges into Lake Arrowhead, a "water of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the U.S., Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. On April 14, 2008, EPA inspected the facility and determined that it did not have CAFO permit coverage. The EPA inspector observed and documented that the facility's lagoon had overflowed, due to a rainfall event which occurred a few days prior to the inspection. The discharged wastewater entered an unnamed creek and traveled about one mile before entering Little Onion Creek. Little Onion Creek flows about three miles before it enters Onion Creek, which discharges into the Little Wichita River, 7.5 miles downstream. The Little Wichita River flows about 7.5 miles before discharging into Arrowhead Lake, a water of the U.S.

7. The inspector followed the discharge on foot and gathered photographic evidence of the discharge from the point where it flowed out of the lagoon to the point where it entered Little Onion Creek, a distance of about one mile.

8. Because the discharge had occurred a few days prior to the inspector's arrival at the facility, the flow path was characterized by creek bed scouring and numerous stagnant pools of wastewater along the flow path. The United States Geological Survey 7.5 minute topographic quadrangle map identifies Little Onion Creek as a perennial creek.

9. Respondent told the EPA inspector that another lagoon overflow, similar to this one, occurred at this facility about two years ago.

10. The discharge of pollutants from the facility's lagoon, without permit authorization, to Little Onion Creek was an unauthorized discharge of pollutants to a water of the U.S. and a violation of Section 301 of the Act, 33 U.S.C. § 1311.

11. On July 17, 2008, EPA issued to Respondent Administrative Order Docket Number CWA-06-2008-2021, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Order required Respondent to: 1) immediately cease and desist all discharges of pollutants from the facility's lagoon to waters of the U.S.; 2) submit to EPA, within forty five (45) days, documentation certified by a registered professional engineer, to prove that the facility has adequate lagoon capacity to contain all waste and process-generated wastewater plus storm water runoff generated during a 25-year, 24-hour storm event; and 3) develop and implement, within forty five (45) days, a pollution prevention plan that includes procedures for (a) proper utilization of the nutrients generated by the facility; (b) proper disposal of dead animals; and (c) proper maintenance of records, especially records documenting wastewater levels in the lagoon to minimize lagoon overflows.

12. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.

13. EPA has notified the Texas Commission on Environmental Quality of the issuance of this Complaint and has afforded the State of Texas 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).

14. 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

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 hereby proposes to assess against Respondent a penalty of twenty thousand dollars (\$20,000).

16. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 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.

IV. FAILURE TO FILE AN ANSWER

17. 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 Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. 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 a 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).

19. If Respondent does not file an Answer to this complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A 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 Respondent without further proceedings sixty (60) days after a Final Default Order is issued.

20. 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

21. 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

22. 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, with supplemental rules at 40 C.F.R. § 22.38.

23. 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.

24. 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).

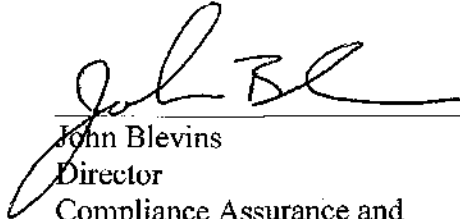
VI. SETTLEMENT

25. 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, of my staff, at (214) 665-8403.

26. 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 to 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.

27. Neither assessment nor payment of a penalty in resolution of this action will affect 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.

3/17/09
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 Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Ray Hoffman, Jr.
Ray Hoffman, Jr. Dairy
4033 Munchrath Rd.
Windthorst, TX 76389

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

Dated: _____

MAR 13 2008

Jackie Samuel