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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK
REGION 6 EPA REGION VI

In the Matter of	§	Docket No. CWA-06-2010-1908
	§	
Barbara Koricanek	§	
d/b/a Koricanek Poultry Laying Facility	§	Proceeding to Assess a
	§	Civil Penalty under Section 309(g)
	§	of the Clean Water Act
Respondent	§	
	§	
NPDES No. TXG920059	§	Respondents Answer and
	§	Request for a Hearing

Hearing Request

Respondent Barbara Koricanek files this Answer of Respondent and Request for Hearing in the above referenced matter pursuant to 40 C.F.R. § 22. Respondent requests a hearing to contest the material allegations set out below and to contest the proposed penalty.

Findings of Fact

Finding 3

Response: Respondent denies that at all relevant times the facility was a point source discharge of pollutants with its process-generated wastewater runoff discharging into the receiving waters of Canoe Creek for the reasons set out in Finding 4.

Finding 4

Response: Respondent denies the allegations set out in Finding 4 as explained herein. The discharge described above flows via a grass swale down a fairly steep slope onto an adjoining property ; however a berm on the adjoining property prevents this water from entering Canoe Creek. The reason that this swale appears in an aerial photograph is that it is the main stormwater outlet for the property. The swale drains the roofs and area around the two northernmost laying houses (~1 acre) as well as approximately 12 acres of the pasture area north of the laying houses. Thus, the channel of the swale is the result of stormwater runoff and not from discharge of process wastewater. The drainage swale maintains a thick cover of coastal Bermuda grass at all times except during extended drought periods. There is no sign of erosion, deposition or discoloration of the vegetation that would indicate that process water had been discharged along this path for a "long time". Also the road shows no signs of water movement or erosion, thus the discharge was a short-term episode, responding to an emergency situation in the wrong way. Finally the berm on the adjoining property prevented this water from entering Canoe Creek. The practice of discharging a relatively small quantity of wastewater after heavy

rainfall episodes has been stopped and alternative means of handling such emergencies are being developed. A picture documenting these facts was provided to John Blevins by Engineer Steve Winton in a September 20, 2010 letter.

Finding 8.

Response: Respondent denies the allegations set out in Finding 8 for the reasons set out herein. The facility owner's brother was not present during the inspection. The only brother that the facility owner has is confined to a nursing home in New York State. Mrs. Koricanek son, Joel Koricanek, joined the site visit after the parties had moved to the Koricanek home to review the records for the laying facility. At no time did Mrs. Koricanek or her son say or imply that the discharge had been going on for a "long time." The discharge was the result of a piping break and the removal of a piping cleanout cap during repair which allowed the line to drain so that the repair could be completed. The facility operator was taking steps to prevent a major discharge from the broken pipe. This was not a deliberate action but a response to an emergency situation that was in the process of being resolved.

The EPA inspector observed that the embankment of the north lagoon had been intentionally cut or breached to drain wastewater from the lagoon. The lagoon has been repaired. The heavy grass growth shown in a picture provided to John Blevins by Engineer Steve Winton on September 20, 2010 indicates that the breach did not extend low enough into the berm to reach the wastewater level in the lagoon. It should be noted that the normal water level is three feet below where the repair was made. Even after a heavy rain this lagoon water level only rises a few inches due to the lagoon design that allows the stormwater to move on to the downstream lagoons. Thus, the breach never allowed any wastewater to leave the lagoon system since it was well above the lagoon water level.

Further investigation has revealed that the stormwater pond at the composting facility on the adjoining property is next to the fence line with the Koricanek property. During heavy rainfall this stormwater pond catches runoff from the compost piles and frequently overflows on to the Koricanek property as per the laying facility operator. This overflow which has a black color similar to the wastewater in the lagoons, proceeds down gradient along the fence line east of the lagoon system and eventually into the Koricanek stock pond below the lagoons. The rain gauge at the laying facility measured a 1.74 inches of rainfall the day before the site inspection. Thus, it is likely that the wastewater flow seen by the EPA inspector was from the compost facility pond. The compost facility owner has been notified of this problem and the need to insure that the overflow is stopped.

There are no improperly stored manure piles on the ground in the lagoon area or on the property. Manure is flushed to the primary settling lagoon and none of the manure is stored on the ground. Even during the cleaning of the lagoon, any sludge from the lagoon is moved from the lagoon to a tank or dump truck for transport for beneficial reuse.

At the time of the inspection there was a pile of grit at the east end of the primary settling lagoon (closest to the laying houses). This grit falls on the laying house floors and is periodically removed. This material does not smell nor have any characteristics of the waste flushed to the

primary lagoon. The practice of piling this waste outside the buildings has been stopped and the existing piles have been disposed of via land application.

The extent of the solids in the ponds cannot be determined visually. Due to the nature of the solids entering the lagoon, the bacterial action that produces gas bubbles and the feathers that are entrained in the manure flushes, there is a floating mat on the surface of the primary settling lagoon. Part of this mat washes over to the second lagoon during heavy rainfall and accumulates over time making both the primary and secondary lagoons appear to be full of solids. The neighbor on the adjoining property has a composting operation. This neighbor, who breached the berm of the primary settling lagoon without authorization, attempted to remove sludge from the bottom of the primary settling lagoon to blend with compost. His comment was that there is not much sludge in the lagoon but a lot of grit and egg shell at the bottom of the lagoon. He was surprised that his excavator had no problem moving around in the lagoon due to the thick layer of egg shell and lack of sludge.

Further probing in the lagoons indicates that the primary settling lagoon (Lagoon #1) has heavy deposits of grit at the inlet and where it overflows into Lagoon #2. The sludge depth in the middle 70 percent of Lagoon #1 is less than half of the lagoon depth. The inlet and outlet area will be cleaned as soon as a contractor can be retained to do the work.

Lagoon #2 has a significant loss of capacity due to solids sedimentation. This lagoon will be cleaned as soon as a contractor can be retained to do the work.

A picture provided to John Blevins on September 20, 2010 by Engineer Steve Winton shows the southwest corner of Lagoon #3 (southernmost lagoon) which is the lowest area of the lagoon berm. The picture and the inspection by Mr. Winton confirm no sign of erosion that would be the primary indication of frequent overflow. There is one small disturbed area of soil in the picture. The disturbed area is the hoof print of a cow that meandered down the bank of the lagoon.

As a precaution and to insure the lagoon integrity, this area of the lagoon berm will be raised to insure compliance with federal regulations and that no overflow occurs.

The laying facility was land applying under a NUP. However, the document was out of date.

Finding 9

Response: All the necessary repairs were made on March 25th and the discharge was eliminated the day of the inspection. The facility has been in compliance since that day with respect to process-generated wastewater. A quarterly inspection is now being performed by a registered professional engineer to insure that compliance is maintained.

Steven L. Winton, P. E. has been retained to perform and/or oversee that the requirements of this section of the Administrative Order are completed. A written plan for complying with the

requirements of the TCEQ CAFO general permit were submitted by Steve Winton to John Blevins by letter dated September 20, 2010.

Finding 10

Respondent denies that it is liable for a civil penalty of \$16,000.00 per day or a maximum fine of \$177,500.00

Finding 11

Respondent does not have sufficient information to admit or deny Finding 11.

Finding 12

Respondent does not have sufficient information to admit or deny Finding 12.

Finding 13

Respondent denies, for the reasons stated herein, that a \$160,000.00 penalty is appropriate or supported by the authority of Sections 309(g)(1) and (g)(2)(B) of the Clean Water Act.

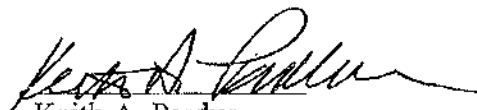
Finding 14

Respondent denies that the proposed penalty included such factors as specified in Section 309(g)(3) of the Clean Water Act.

Respondent's name address and phone number are provided below:

Barbara Koricanek
7247 N. U.S. Highway 183
Gonzales, Texas 78629
1 830 672 6910

Sincerely,



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Docket No. CWA-06-2010-1908

CERTIFICATE OF SERVICE

I certify that the foregoing Answer of Respondent and Request for Hearing was sent to the following persons by Priority U.S. Mail on February 23, 2011

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

One Copy: Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733


Keith A. Pardue