

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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In the Matter of

Sidney Walker and Antoon Jacobs
d/b/a Sidney Walker Dairy

Respondents

TPDES PERMIT No. TXG921307

§ Docket No. CWA-06-2017-1781
§
§
§ Proceeding to Assess a
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act
§
§ ADMINISTRATIVE COMPLAINT
§

LEGAL HEARING CLERK
EPA REGION VI

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 (“Act”), 33 U.S.C. § 1319(g). The Administrator of EPA delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“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 Procedure 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. Sidney Walker and Antoon Jacobs are individuals doing business as Sidney Walker Dairy (collectively, "Respondents") and are "persons," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant ("relevant time period") to the violations alleged herein, and within the meaning of 40 C.F.R. § 122.2, Respondents owned or operated Sidney Walker Dairy located in Yantis, Wood County, Texas ("facility"). The facility is a large concentrated animal feeding operation ("CAFO"), as defined Section 502(14) of the Act and 40 C.F.R. § 122.23(b)(4).

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" to an unnamed tributary of Glade Creek, which is 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 Respondents owned or operated a facility that acted as a point source of discharges of pollutants to waters of the United States, Respondents 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. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit. The NPDES program was delegated to the Texas Commission on Environmental Quality (“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 permit program.

7. Respondents applied for and were issued, by TCEQ, a Texas Pollutant Discharge Elimination System (TPDES) Concentrated Animal Feeding Operation (“CAFO”) Permit No. TXG921307 (“permit”), under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on June 30, 2013. At all relevant times, Respondents were authorized to discharge pollutants from the facility to waters of the United States only in compliance with the specific terms and conditions of the permit.

8. On June 4, 2014, TCEQ inspectors, Texas Parks and Wildlife Service personnel, the Regional Biologist, and staff from the Sabine River Authority conducted an investigation in response to a fishkill.

- Investigators observed fresh dirt work that had been done in the area adjacent to Retention Control Structure (RCS) RCS #1 which appeared to be an attempt to cover up the discharge route from RCS #1 into the adjacent creek.
- Also, investigators observed pooling and ponding of wastewater about 150 feet east of RCS #1. It was the same color and had the same characteristics as the wastewater in RCS #1.

9. During the June 4, 2014 inspection, TCEQ inspectors collected samples from upstream and downstream of the facility. Results of this sampling confirmed that the facility was the source of the discharge. Investigators observed that the receiving stream exhibited normal conditions upstream of the facility. The water upstream of the facility was clear and showed no evidence of pollution. In contrast, the receiving stream immediately downstream of the facility was dark brown. The results of the sampling confirmed that the facility was the source of the discharge and this unauthorized discharge resulted in a fish kill. Results of the June 4, 2014 sampling event taken by TCEQ are summarized in Table 1 below:

TABLE 1

UPSTREAM	DOWNSTREAM
DO: 4.6 mg/L at CR 1800	DO: 0.2 mg/L at CR 1802
Ammonia: 1.99 mg/L (sample #1)	Ammonia: 75.0 mg/L (sample #7)
BOD: 12.0 mg/L (sample #1)	BOD: 203 mg/L (sample #7)

10. Table 2 below summarizes the results of Sample #3 collected from RCS #1 and Sample #9 collected from the receiving stream at FM 2966, about 1.75 miles downstream of the facility. As indicated in Table 2, there is very little difference between Sample #3 collected from RCS #1 and Sample #9 from the receiving stream, 1.75 miles downstream of the facility.

TABLE 2

SAMPLE #3 (from RCS #1)	SAMPLE #9 (from 1.75 miles downstream)
Ammonia: 121 mg/L	Ammonia: 118 mg/L
BOD: 142 mg/L	BOD: 156 mg/L
DO: 0.5 mg/L	DO: 0.4 mg/L

11. On June 26, 2014, EPA staff inspected the facility.

- EPA and observed dense growth of trees and shrubs on the RCS #1 berm area next to the unnamed tributary of Glade Creek. Part III.A.9(f)(3) of the TCEQ CAFO permit requires that no trees be allowed to grow which would compromise the liner or the embankment.
- There were no marks on the pond markers indicating the required storage capacity for the 25-year, 24-hour storm event which is a violation of Part III.A.9(c) of the TCEQ CAFO permit.
- Although the facility was not discharging at the time of the inspection, the EPA inspector observed the presence of what appeared to be wastewater in the unnamed tributary of Glade Creek which runs along the northern property boundary of the facility. However, the EPA inspector did not collect any samples since TCEQ had already collected samples from this creek during the June 4, 2014 investigation.

12. On January 28, 2015, EPA issued to Respondents Administrative Order Docket Number CWA-06-2015-1716 requiring the facility to submit to EPA documentation to prove that a Texas professional engineer had conducted a five-year evaluation to determine the structural integrity of RCS #1 and RCS #2, as required by the Part III.A.14(b) of the TCEQ CAFO permit. To date, Respondents have failed to comply with EPA's Administrative Order including Part III.A.14(b) of the TCEQ CAFO permit.

13. On April 2, 2015, EPA staff inspected the facility again. EPA again observed trees and shrubs growing on the berms of RCS #1. EPA inspectors noted that the facility failed to maintain lagoon embankments as required by Part III.A.9.f.3 of the TCEQ CAFO permit. EPA also observed accumulation of solids in RCS #1 and around the concrete solids separator connecting the feeding barns to RCS #2. The sand separator was not in use and was positioned in a way that rendered it inoperable. The sand separator is intended to separate solids including manure, straw and other bedding material within the flush water from the two freestall barns before it is discharged into RCS2. Because the sand separator was not in use, flush water and the solids from the freestall barns were allowed to bypass the sand separator and flow into the manmade shallow earthen ditch to RCS2. Buildup of solids shortly downstream of the sand separator was observed which seemed to indicate previous incidents of blockage within the earthen ditch. The inspector also observed the lack of curbing along the sides of the ditch which could allow uncontrolled run-on and run-off.

14. On September 2, 2015, EPA issued to Respondents a second Administrative Order Docket Number CWA-06-2015-7151 requiring the facility to submit to EPA documentation to prove that RCS #1 and RCS #2 were properly designed, constructed, operated, and maintained to contain all waste and process-generated wastewater plus runoff during the 25-year, 24-hour

storm event as required by Part III.A.14(b) of the TCEQ Permit. To date, Respondents have failed to comply with EPA's Administrative Order including Part III.A.15.b of the TCEQ Permit.

15. On March 29, 2017, EPA staff inspected the facility again.

- EPA observed that the berms of RCS #1 were densely vegetated, including trees which were rooted in the embankment on the north and east sides of the lagoon which is a violation of Part III.A.10(f)(3) of the TCEQ CAFO.
- EPA inspectors observed a channel connected to RCS #2 which was being used as a solids settling basin. The solids settling channel/basin appeared to be an extension of RCS #2. EPA inspectors noted that the solids settling basin attached to RCS #2 is functioning as an extension of RCS #2 although it had not been certified by a Texas professional engineer, as required by Part III.A.6(a) of the TCEQ CAFO permit.

Each day of unauthorized discharge and each permit violation was a violation of Section 301 of the Act, 33 U.S.C. § 1311.

16. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents are liable for a civil penalty in an amount not to exceed \$20,628 per day for each day during which a violation continues, up to a maximum of \$51,570.

17. EPA has notified TCEQ of the issuance of this Complaint and has afforded the State 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).

18. EPA has notified the public of the filing of this Complaint via the internet at www.epa.gov/publicnotices, 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

19. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondents a penalty of twenty-eight thousand dollars (\$28,000.00).

20. 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 include 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

21. If Respondents wish to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondents must file an Answer to this Complaint within thirty (30) days after service of this Complaint whether or not Respondents request a hearing as discussed below.

22. 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

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).

23. If Respondents do not file an Answer to this Complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondents 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 Respondents without further proceedings thirty (30) days after a Final Default Order is issued.

24. Respondents must send their 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

Respondents shall also send a copy of their 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, Suite 1200
Dallas, TX 75202-2733

25. The Answer must be signed by Respondents, Respondents' counsel, or other representative on behalf of Respondents and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondents and Respondents' counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

26. Respondents 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.

27. Any request for hearing should be included in Respondents' Answer to this Complaint; however, as discussed above, Respondents 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.

28. 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


29. 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, Respondents may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondents 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.

30. 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 Respondents’ 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.

31. Neither assessment nor payment of a penalty in resolution of this action will affect Respondents’ 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.

8/29/17
Date


Cheryl T. Seager
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. Antoon Jacobs
d/b/a Sidney Walker Dairy
1088 County Road 2341
Sulphur Springs, TX 75482-8919

Copy by certified mail,
return receipt requested: Mr. Sidney Walker
d/b/a Sidney Walker Dairy
1088 County Road 2341
Sulphur Springs, TX 75482-8919

Copy by First Class Mail Mr. Sandy Van Cleave, Manager
Water Enforcement Section (MC 219)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

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

Dated: August 3, 2017

