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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

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	§
	§ ADMINISTRATIVE COMPLAINT
NPDES No. TXG920059	§

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 has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (“Complainant”). This Class II 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. Barbara Koricanek (“Respondent”) is an individual doing business as Koricanek Poultry Laying Facility, and as such, 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 an egg laying facility, Koricanek Poultry Laying Facility, located at 7605 N. U.S. Highway 183, in Gonzales, Gonzales County, Texas (“facility”), 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” with its process-generated wastewater and storm water runoff to the receiving waters of Canoe Creek, which is considered 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 acted as a point source of discharges of pollutants to waters of the United States, 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. 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.

7. Respondent applied for and was issued a Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") Permit No. TXG920059 ("permit") under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on July 20, 2009. At all relevant times, Respondent was 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 March 25, 2010, EPA and the Texas Commission on Environmental Quality ("TCEQ") inspectors conducted a compliance evaluation inspection and determined that the facility was not implementing its pollution prevention plan ("PPP") as required by the TCEQ CAFO permit. Part II.A of the TCEQ CAFO permit prohibits the discharge of process wastewater to waters of the United States from any CAFO facility that is not designed, constructed, and properly operated and maintained in accordance with the requirements specified in the PPP. The unauthorized discharges found at the facility included the following:

- Unauthorized discharge of process-generated wastewater from the north hen house into Canoe Creek, a water of the United States: the EPA inspector observed that the facility operator had installed a hose to drain wastewater from the north hen house onto the ground from where it flowed into the nearby Canoe Creek. When asked to explain, the facility operator told the EPA inspector that she was forced to install this hose because the pipes that are designed to convey wastewater from the north hen house into the lagoon system were blocked and not functioning. The inspector established that this discharge had been going on for a very long time since the discharge route is clearly

visible on aerial photos. The facility owner's brother also confirmed that this discharge had been going on for many years. The PPP requires the facility to manage all wastes generated in the hen houses by using the 3-lagoon system. However, the facility operator bypassed the lagoon system and discharged the wastewater into Canoe Creek, via a hose. This discharge of process-generated wastewater from the north hen house into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.

- Unauthorized discharge of process-generated wastewater due to blockage and leakage of the re-use pipes that are designed to recycle wastewater from the waste storage lagoon back into the hen houses for reuse: the EPA inspector observed wastewater leaking from excavated sections of the re-use pipes. The discharged wastewater flowed downhill across the access road, through the fence into the roadside ditch along Highway 183 and into Canoe Creek. The EPA inspector also observed that the screw top on the re-use pipe clean-out port had been removed, thus allowing more wastewater to discharge onto the ground. The PPP requires the facility to maintain all facilities, including ponds, pipes, ditches, pumps, diversion, and irrigation equipment, in good working order to insure compliance with the terms of the CAFO permit and the PPP. This discharge of process-generated wastewater into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.
- Unauthorized discharge of process-generated wastewater from the facility lagoon to waters of the United States: the EPA inspector observed that the embankment of the north lagoon had been cut or breached to drain wastewater from the lagoon. When asked to explain, the facility owner stated that she had given permission to her neighbor to remove some of the wastewater and solids from the lagoon for use in the adjacent neighbor's composting operation. However, the facility owner stated that she had not realized that her neighbor had drained the lagoon through a cut in the lagoon embankment, instead of pumping the wastewater and sludge from the lagoon. The EPA inspector observed that some of the wastewater drained from the lagoon flowed downhill across the access road, through the fence and into the roadside ditch along Highway 183 before it eventually discharged into Canoe Creek. According to the PPP, all confinement house wastes are to be managed in the lagoon system. This discharge of process-generated wastewater into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.
- Unauthorized discharge of leachate and storm water runoff from improperly stored manure piles: according to the PPP, runoff from stockpiled manure must be retained onsite. This facility violated this requirement. This discharge of process-generated wastewater into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.

- Unauthorized discharge resulting from failure to maintain adequate storage capacity in the lagoons: the EPA inspector observed that the lagoons were full of solids. The EPA inspector also observed evidence of frequent overflow from the southernmost lagoon. The PPP requires the facility operator to maintain a freeboard of 3 feet, 10 inches in the southernmost pond. If the water level is above the depth (3 feet, 10 inches) required to maintain adequate capacity in the lagoon, the wastewater will be removed until the capacity is restored. The facility violated this requirement of the permit, resulting in frequent overflow of the lagoon and discharge to a water of the United States. This discharge of process-generated wastewater into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.
- Unauthorized discharge from land application fields: this facility is land-applying manure and wastewater on soils with extremely high phosphorus concentrations (greater than 1,000 parts-per-million). This is in excess of what the TCEQ CAFO permit allows. Any discharge of runoff from these phosphorus-saturated land application fields into nearby waters of the United States is an unauthorized discharge because such a discharge does not meet the definition of agricultural storm water runoff. This discharge of process-generated wastewater into the Canoe Creek is in violation of Part II.A of the TCEQ CAFO permit and also of Section 301 of the Act, 33 U.S.C. §1311.

9. On August 11, 2010, EPA issued to Respondent a Cease and Desist Administrative Order Docket Number CWA-06-2010-1902, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Order required Respondent to:

- Take all the necessary steps to immediately stop any discharge of process-generated wastewater from the facility into nearby waters of the United States;
- Provide, within forty-five (45) days from the effective date of the Cease and Desist Order, a written plan for the facility to come into compliance with the requirements of the TCEQ CAFO permit. Such a plan must include a schedule for obtaining certification, by a licensed Texas professional engineer to prove that (1) the facility has adequate storage capacity to contain all waste and process-generated wastewater plus runoff during a 25-year, 24-hour storm event, (2) the breached lagoon embankment has been properly repaired to meet engineering design specification, (3) the manure/wastewater collection system is operating properly and there are no clogged or leaking pipes, and (4) there is adequate land application acreage to utilize all the manure and wastewater generated by the facility.

10. 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 \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500.

11. 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).

12. 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

13. 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 one hundred and sixty thousand dollars (\$160,000).

14. 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

15. 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.

16. 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 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).

17. 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 thirty (30) days after a Final Default Order is issued.

18. 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, Suite 1200  
Dallas, TX 75202-2733

19. 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

20. 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.

21. 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.

22. 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).

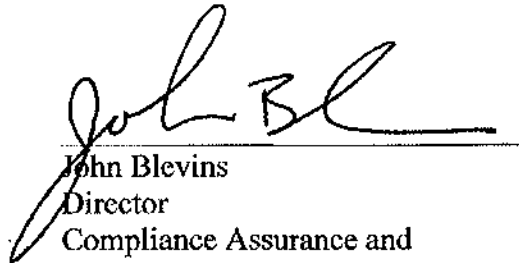
#### VI. Settlement

23. 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.

24. 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.

25. 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.

1/20/11  
Date

  
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John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class II 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: Ms. Barbara Koricanek  
7247 N. U.S. Highway 183  
Gonzales, TX 78629

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: JAN 21 2011

