



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270-2102

March 8, 2022

TRANSMITTED VIA E-MAIL

Mr. Antoon Jacobs
Jacobs Dairy
1000 FM 1567 W
Sulphur Springs, Texas 75482
jacobstj5@gmail.com

Re: Notice of Proposed Assessment of Class I Civil Penalty
Docket Number: CWA-06-2022-1736
Permit Number TXG920116

Dear Mr. Jacobs:

Enclosed is an Administrative Complaint (Complaint) issued to Jacobs Dairy (facility) by the United States Environmental Protection Agency (EPA) Region 6 for violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and the facility's concentrated animal feeding operations (CAFO) permit issued by the Texas Commission on Environmental Quality (TCEQ). The violations alleged include failure to: (1) maintain the facility's process wastewater retention control structures (RCS) in proper working order, as required by the TCEQ CAFO permit, and (2) maintain operation and maintenance records, including weekly lagoon level records. The EPA requests that you immediately confirm receipt of this e-mail and the attached Complaint by a response e-mail to senkayi.abu@epa.gov.

As the representative of Jacobs Dairy, you have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to the enclosed 40 CFR Part 22, "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," for information regarding hearing and settlement procedures. Also note that if you should fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing, and the proposed civil penalty of sixteen thousand dollars (\$16,000) may be assessed against you without further proceedings.

Whether or not you request a hearing, we invite you to confer informally with the EPA concerning the alleged violation and the amount of the proposed penalty. You may represent Jacobs Dairy or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference.

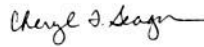
Also enclosed for your review is the Consent Agreement and Final Order (Final Order) that specifies a proposed settlement agreement between EPA and Jacobs Dairy resolving the violations alleged in the Complaint. If you wish to enter into this settlement agreement, please sign, date, and return the Final Order to Ms. Ellen Chang-Vaughan (6RC-EW) at chang-vaughan.ellen@epa.gov. If you agree to settle this matter by signing and returning the Final Order, EPA will solicit public comments, which may impact the settlement. After consideration of public comments, EPA will sign and issue the Final Order which is effective thirty (30) days after the issuance date. Please do not send payment of the penalty until you

receive the Final Order signed by EPA. By signing the Final Order and agreeing to settle the matter, you waive your right to a hearing on, and to a judicial appeal of, the agreed civil penalty specified in the Final Order.

Please also find enclosed an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission.

The EPA is committed to ensuring compliance with the requirements of the CAFO program, and my staff will assist you in any way possible. If you have any questions or wish to discuss the possibility of a settlement of this matter, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403. The EPA acknowledges that the COVID-19 pandemic may impact your business. If that is the case, please contact us regarding any specific issues you need to discuss.

Sincerely,



Digitally signed by Seager, Cheryl
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email=Seager.Cheryl@epa.gov
Date: 2022.03.08 14:20:49 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

cc: w/complaint - Regional Hearing Clerk

Leroy Biggers, Regional Director
Texas Commission on Environmental Quality, Region 5
leroy.biggers@tceq.texas.gov

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 22 MAR -8 PM 3:45
REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

§ Docket No. CWA-06-2022-1736

Jacobs Dairy

§
§

Respondent

§ Proceeding to Assess a
§ Civil Penalty under Section 309(g)
§ of the Clean Water Act

Permit No. TXG920116

§
§ 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 (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 Enforcement and Compliance Assurance 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 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. The Respondent, Jacobs Dairy, is a “person,” 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, Respondent owned or operated a dairy located at 925 Private Road 6342, Sulphur Springs, Hopkins County, Texas (here in “the facility”). The facility is a concentrated animal feeding operation (CAFO), as defined by 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” with its process-generated wastewater and storm water runoff to the receiving waters of South Sulphur River.

4. Respondent applied for and was issued, by the Texas Commission on Environmental Quality (TCEQ), a Texas Pollutant Discharge Elimination System (TPDES) CAFO Permit No. TXG920116 (permit), under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on September 15, 2004, and was last renewed on February 5, 2020. At all relevant times, Respondent was required to comply with the specific terms and conditions of its CAFO permit.

5. 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 program.

6. When a state is authorized to administer an NPDES program pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342, the Administrator retains the authority, concurrent with the authorized state, to enforce state-issued permits and to take enforcement action under Section 309(a) and (b) of the Act, 33 U.S.C. §§ 1319(a) and (b).

7. On July 13, 2021, EPA staff inspected the facility and observed the following permit violations:
 - a. Failure to maintain the facility's retention control structures (RCS) in proper working order. The EPA inspector observed that the RCS embankments were covered by dense vegetation and were inaccessible for evaluation of the lagoon embankments and lagoon level assessment due to the dense and high vegetation. Part III.A.10 of the TCEQ CAFO permit requires the permittee to maintain: (1) adequate RCS wastewater storage capacity by preventing the accumulation of sludge in the RCS, (2) proper wastewater levels in the RCS, and (3) liner integrity of the RCS by preventing vegetation growth on RCS embankments.
 - b. Failure to provide records of weekly lagoon level measurements. Part III.A.15(a)(3) of the TCEQ CAFO permit requires the permittee to conduct weekly inspections of the RCS.
8. On December 14, 2021, EPA issued to Respondent a notice of potential violations and opportunity to confer (NOPVOC). The NOPVOC provided Respondent the opportunity to confer with EPA and discuss the violations alleged in the NOPVOC.
9. On January 24, 2022, EPA staff met with the facility's representative via Microsoft Teams. During this meeting, the facility's representative stated that the facility had been sold and Respondent stopped maintaining the facility's RCS about twelve months from the date of the July 13, 2021, inspection.

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 \$23,989 per day for each day during which a violation continues, up to a maximum of \$59,973.

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 sixteen thousand dollars (\$16,000).

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 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. Respondent has a long history of non-compliance with TCEQ's CAFO permit. Respondent's long history of non-compliance is documented in the following EPA's Administrative Orders (1) Docket Number CWA-06-2013-1815 issued in 2013 for unauthorized discharges to waters of the

US, (2) Docket Number CWA-06-2015-1817 issued in 2015 for unauthorized discharges to waters of the US, and (3) Docket Number CWA-06-2019-1798 issued in 2019 for failure to maintain lagoons in proper working order.

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 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).

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
1201 Elm Street, Suite 500
Dallas, TX 75270
vaughn.lorena@epa.gov

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
1201 Elm Street, Suite 500
Dallas, TX 75270
chang-vaughan.ellen@epa.gov

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).

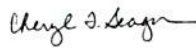
VI. Settlement

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) 665-8304 or senkay.abu@epa.gov.

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 (Final Order) pursuant to 40 C.F.R. § 22.18(b). The issuance of a Final Order 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 Final Order 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 Final Order.

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.

March 8, 2022
Date



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email=Seager.Cheryl@epa.gov
Date: 2022.03.08 14:26:10 -06'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance 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 delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
vaughn.lorena@epa.gov

Copy by email: Mr. Antoon Jacobs
Jacobs Dairy II
1000 FM 1567 W
Sulphur Springs, TX 75482
jacobstj5@gmail.com

Copy by email Mr. Leroy Biggers, Regional Director
Texas Commission on Environmental Quality, Region 5
leroy.biggers@tceq.texas.gov

Copy delivered: Ms. Ellen Chang-Vaughan (6ORC-EW)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
chang-vaughan.ellen@epa.gov

Dated: 3/8/22

Lorena Vaughn