

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

La Belle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Bella Poultry, Inc.
P.O. Box 555
29 Fraser Road
Ferndale, New York 12734

SPDES Permit No. NYA001500

Respondents

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2012-3308

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 SEP 10 P 3:37
REGIONAL HEARING
CLERK

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondents, as a result of Complainant's determination that the Respondents are in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, by failing to comply with the terms of the New York State Department of Environmental Conservation's ("NYSDEC's") State Pollutant

Discharge Elimination System (“SPDES”) General Permit for Concentrated Animal Feeding Operations at a facility it owns and operates.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
2. Section 402(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association or municipality.
5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, biological materials and agricultural waste discharged into water.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
7. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
8. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
9. An “animal feeding operation” or “AFO” is defined by 40 C.F.R. §122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

10. A “concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. §122.23(b)(2) as an AFO that is, inter alia, a medium CAFO.
11. A “large CAFO” is defined by 40 C.F.R. §122.23(b)(6)(i) as an animal feeding operation that stables or confines as many or more than 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system or more than 5,000 ducks, if the AFO uses a liquid manure handling system.
12. “Process wastewater” is defined by 40 C.F.R. §122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
13. “Production area” is defined by 40 C.F.R. §122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
14. The Administrator of EPA has promulgated regulation 40 C.F.R. §122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. The regulations at 40 C.F.R. §122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.
15. The terms “CAFO General Permit” or “Permit” mean the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations issued by NYSDEC, pursuant to Section 402 of the CWA. NYSDEC issued SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) on June 24, 2004. The permit became effective on July 1, 2004 and expired on June 30, 2009 and has been administratively extended. The current permit (GP-04-02) supersedes the previous SPDES permit (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
16. The term “CNMP” means Comprehensive Nutrient Management Plan, as defined in the CAFO General Permit.
17. The term “BMPs” means Best Management Practices, as defined in the CAFO General Permit.
18. Section V.C of the CAFO General Permit requires the permittee and the new owner or operator to submit a complete Notice of Transfer form (Appendix A).
19. Section VII.A of the CAFO General Permit provides that CNMPs are required to be prepared in accordance with “Natural Resource Conservation Service (“NRCS”) Conservation Practice Standard No. NY312”.
20. Section VII.E of the CAFO General Permit requires the permittee to comply with all provisions of the CNMP.
21. Section IX.F of the CAFO General Permit requires the permittee to retain copies of all records

and reports required by this permit for a period of at least five (5) years from the date reported.

22. Section VIII.C.xi of the CAFO General Permit provides that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.”
23. Section VIII.C.xiii of the CAFO General Permit requires the permittee to retain records of manure exports and to provide the recipient of manure, litter and/or process wastewater with representative information on the nutrient content for all instances where one (1) recipient receives greater than 50 tons annually.
24. Section IX.K of the CAFO General Permit requires the permittee to install and maintain a standard rain gauge in the proximity of the confinement area and record all precipitation events in excess of 0.3 inches.
25. Section IX.M of the CAFO General Permit requires all large CAFOs to analyze manure at least once annually for nitrogen and phosphorus content.
26. Section IX.N.ii of the CAFO General Permit requires daily water line inspections, including drinking water and cooling water lines to be conducted and Section IX.O.i requires records of those inspections to be documented.
27. Section IX.O of the CAFO General Permit specifies that dates of manure application equipment inspection should be documented as part of the Land Application Area records requirements.
28. Section IX.O.ii of the CAFO General Permit requires weekly records of the depth marker reading for manure and process wastewater in any open liquid storage structures.
29. Section IX.O.iv of the CAFO General Permit requires records for the handling and disposal of dead animals.
30. Section X.G of the CAFO General Permit requires the permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the permit.
31. Sections 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to commence an administrative action for violations of Section 301 of the CWA, 33 U.S.C. §1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

III. FINDINGS OF VIOLATION

1. La Belle Farm, Inc. and Bella Poultry, Inc. (“Respondents”) are each a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. §1362(5).
2. Respondents own and operate an animal feeding operation consisting of four (4) farmsteads with its principal place of business located in Ferndale, New York (all four (4) farmsteads are collectively referred to herein as the “Facility”).

3. On March 27, 2006, Herman (Cheuk) Lee, doing business as La Belle Farm, Inc., obtained coverage for the four (4) farmsteads (LaBelle, Bella, Able and Goyin Farms) under one (1) NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations, GP-99-01 (NYA001500):
 - a. LaBelle Farm is located at 504 Stanton Corners Road, Ferndale, NY and confines approximately 25,000 ducks on-site using a liquid manure handling system. Production area runoff from the LaBelle Farm discharges to Middle Mongaup River, a navigable water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7). According to on-site representatives, LaBelle Farm is owned by B & B Farms, Inc. and is operated by La Belle Farm, Inc.
 - b. Bella Farms (a/k/a Bella-Old and Bella-New), d/b/a Bella Poultry Farms, Inc., are located at 28 and 29 Fraser Road, Ferndale, NY and confine approximately 250,000 broiler chickens on-site using a dry manure handling system. Production area runoff from Bella Farms discharges via on-site drainage ditches to an unnamed tributary of the Beaverdam Brook or to the Frasers Brook, tributaries to the Mongaup River, a navigable water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7). According to on-site representatives, Bella Farms are owned by Saipling Enterprises, Inc. and is operated by Bella Poultry, Inc.
 - c. Able Farm is located at 379 Dessecker Road, Livingston Manor, NY and confines approximately 12,000 ducks on-site using a dry manure handling system. Production area runoff from Able Farm discharges via an on-site drainage ditch and direct stormwater runoff to a tributary to the Horseshoe Brook, a navigable water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7). According to on-site representatives, Able Farm is owned by Hector and Nelson Saravia and is operated by Jose L. Farms, Inc. and La Belle Farm, Inc.
 - d. Goyin Farm is located at 389 Monticello Road, Liberty, NY and confines approximately 20,000 ducks on-site using a dry manure handling system. Production area runoff from Goyin Farm discharges via an on-site drainage ditch to a tributary of the East Mongaup River, a navigable water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7). According to on-site representatives, Goyin Farm is owned by B & B Farm, Inc. and is operated by La Belle Farm, Inc.
4. The Facility confines and feeds or maintains animals for a total of forty-five (45) days or more in any twelve-month period, and neither: crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. §1362(14).
5. The Facility confines greater than 5,000 ducks using a liquid manure system as well as confines greater than 125,000 chickens (other than laying hens) using other than a liquid manure handling system. Therefore, the Facility is currently a large CAFO as that term is defined in 40 C.F.R. §122.23(b)(6)(i)(A).
6. The Facility discharges stormwater associated with agricultural waste, a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6) from a CAFO, a “point source”

within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14), to a navigable water of the United States, and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. §1362(12).

7. On April 18, 2012, EPA conducted a Compliance Evaluation Inspection (“CEI” or “the Inspection”) at the Facility. At the time of the Inspection, the EPA inspector identified the following violations of the CAFO General Permit:
 - a. Section V.C of the CAFO General Permit requires the permittee and the new owner or operator to submit a complete Notice of Transfer form (Appendix A). Simon Lee has been the owner and operator of Bella-Old and New Farms since December 2009. However, Mr. Lee is not listed as the owner of Bella Poultry, Inc. in the NYSDEC Notice of Intent dated March 2006, and a Notice of Transfer form has not been submitted for Bella Farms. Also, a CNMP certification (Appendix B) has not been submitted to NYSDEC for Bella Poultry, Inc. In addition, Able Farm is owned by Nelson and Hector Saravia and operated by Jose L. Farms, Inc., neither are listed as the owners and/or operators on the most recent NYSDEC Notice of Intent dated March 2006. Therefore, at the time of the Inspection, La Belle Farm, Inc. failed to submit a Notice of Transfer form to identify the new owners and operators of the Bella and Able Farms, in violation of Section V.C of the CAFO General Permit.
 - b. Section VII.A of the CAFO General Permit provides that CNMPs are required to be prepared in accordance with “NRCS Conservation Practice Standard No. NY312”. Specifically, NY312 provides that clean water shall be excluded from concentrated waste areas to the fullest extent practical. At 40 C.F.R. 122.42(e), the Federal CAFO Rule also specifies at a minimum, what a Nutrient Management Plan (“NMP”) must address. Specifically, NMPs should ensure that clean water is diverted, as appropriate, from the production area (see 40 C.F.R 122.42(e)(iii)). At the time of the Inspection, the EPA inspector observed that clean water comes into contact with the production area inconsistent with CNMP requirements, in violation of Section VII.A of the CAFO General Permit, at the following locations:
 - i. At the Bella-Old Farmstead, a pile of burnt wood waste at the south end of the Mortality Compost Storage Building and two (2) sand piles and debris around the New Production Facility were exposed to stormwater;
 - ii. At the Able Farmstead, feathers on the ground north of the Coop were exposed to stormwater; and
 - iii. At the Goyin Farmstead, manure and soil at the loading area on the south side of the Coop were exposed to stormwater.
 - c. Section VII.E of the CAFO General Permit requires the permittee to comply with all provisions of the CNMP. According to the Facility’s 2011 manure application records, manure was applied to LaBelle field in February, April and December 2011, inconsistent with CNMP requirements. Therefore, La Belle Farm, Inc. failed to apply manure in accordance with the CNMP, in violation of Section VII.E of the CAFO General Permit.
 - d. Section IX.F of the CAFO General Permit requires the permittee to retain copies of all records and reports required by this permit for a period of at least five (5) years from the

date reported. La Belle Farm, Inc. failed to retain copies of all records and reports as detailed below, in violation of Section IX.F of the CAFO General Permit:

- i. Section VIII.C.xi of the CAFO General Permit provides that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.” NRCS Conservation Practice Standard No. 313 “Waste Storage Facility” specifies general criteria applicable to all waste storage facilities as well as additional criteria for waste storage ponds. Specifically, NY313 provides that an operation and maintenance plan shall be developed that is consistent with the purposes of this practice, its intended life, safety requirements, and the criteria for its design. On-site representatives could not provide the As-Built Certification for the design and construction of the Manure Storage structure at LaBelle Farm nor could they provide an operation and maintenance plan for the structure.
- ii. Section VIII.C.xiii of the CAFO General Permit requires the permittee to retain records of manure exports and to provide the recipients of manure, litter and/or process wastewater with representative information on the nutrient content for all instances where one (1) recipient receives greater than 50 tons annually. On-site representatives at LaBelle Farm stated that they were unsure if these recipients have received information regarding the nutrient content of the manure, litter and/or process wastewater.
- iii. Section IX.K of the CAFO General Permit requires the permittee to install and maintain a standard rain gauge in the proximity of the confinement area and record all precipitation events in excess of 0.3 inches. Daily rainfall records were not available from March 2007 through December 2007.
- iv. Section IX.M of the CAFO General Permit requires all large CAFOs to analyze manure at least once annually for nitrogen and phosphorus content. Manure analysis test results were not available for review on-site. According to 2011 manure application records, manure from Goyin Farm was land applied to the field at LaBelle Farm. However, 2011 manure analysis test results for Goyin Farm were not available for review at the time of the Inspection.
- v. Section IX.N.ii of the CAFO General Permit requires daily water line inspections, including drinking water and cooling water lines to be conducted and Section IX.O.i requires records of those inspections to be documented. Daily grounds inspections records were not available from March 2007 through December 2007 and were conducted every other day at LaBelle Farm from January 2012 to March 2012.
- vi. Section IX.O of the CAFO General Permit specifies that dates of manure application equipment inspection should be documented as part of the Land Application Area records requirements. Manure application equipment inspections from April 2007 to April 2012 were not available at the time of the Inspection.

- vii. Section IX.O.ii of the CAFO General Permit requires weekly records of the depth marker readings for manure and process wastewater in any open liquid storage structures. Weekly records of the depth marker readings at the LaBelle Farm Manure storage structure had not been documented from March 2007 to March 2012.
- viii. Section IX.O.iv of the CAFO General Permit requires records for the handling and disposal of dead animals. Records of mortalities were not available from March 2007 through December 2008.
- e. Section X.G of the CAFO General Permit requires the permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the permit. Inadequate operation and maintenance was observed at the following locations, in violation of Section X.G of the CAFO General Permit:
 - i. At the LaBelle Farmstead, areas lacking vegetation along the east side of Coop #1 and west side of Coop #3 and a significant solids accumulation in the Manure Storage structure;
 - ii. At the Bella-New Farmstead, vegetation kill zones extending east of the center exhaust fan on the east side of Coop #4 and directly east of the northern most exhaust fan and center exhaust fan on the east side of Coop #2;
 - iii. At the Bella-Old Farmstead, vegetation kill zones along the north side of Coop #2 where the exhaust fans are located adjacent to a ditch that contained green and brown discolored water; and
 - iv. At the Able Farmstead, areas lacking vegetation along the southeast side of the Coop adjacent to exhaust fans and a severely eroding slope on the southeast side of the Coop extending downhill to a tributary to the Horseshoe Brook.
- 8. On June 15, 2012, pursuant to Section 309 of the CWA, EPA issued an Administrative Order ("AO" or "Order") (CWA-02-2012-3046), which directed La Belle Farm, Inc. to comply with the requirements of the CAFO General Permit.
- 9. Sergio A. Saravia, Esq. submitted responses to EPA on behalf of LaBelle, Farm, Inc. dated April 26, 2012, June 8, 2012, June 22, 2012 and July 19, 2012 that addressed Ordered Provisions in the AO.
- 10. Based on the Findings above, Respondents violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondents assessing a civil penalty of **\$22,500**. EPA determined the proposed penalty after taking into account

the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the violation (or violations), and Respondents' prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty. Based on the Findings set forth above, the **Respondents are liable for violations of the Act, one of which has continued for at least ninety-two (92) days**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents file an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. §22.15(a). Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondents have any knowledge. 40 C.F.R. §22.15(b). Where Respondents lack knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that the Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondents request a Hearing. 40 C.F.R. §22.15(b).

Respondents' failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondents in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If however, Respondents do not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondents request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondents fail in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondents fail to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. §22.15(a)], Respondents may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. §22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. §22.27(c). 40 C.F.R. §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in Federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondents requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint and Respondents may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondents has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondents are referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondents may have regarding this

Complaint should be directed to:

Melva J. Hayden, Esq.
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230

The parties may engage in settlement discussions regardless of whether Respondents have requested a Hearing. 40 C.F.R. §22.18(b)(1). Respondents' requesting a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondents waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondents (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty **\$22,500** within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO 63197-9000
Docket No. CWA-02-2012-3308

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' right both to contest the allegations made in the Complaint and to appeal said Final Order to Federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Melva J. Hayden, Esq.
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230
Fax: (212) 637-3199

IX. GENERAL PROVISIONS

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 5th DAY OF SEPTEMBER, 2012.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

La Belle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Bella Poultry, Inc.
P.O. Box 555
29 Fraser Road
Ferndale, New York 12734

SPDES Permit No. NYA001500

Respondents

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2012-3308

CERTIFICATE OF SERVICE

I certify that on SEP 10 2012, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Mr. Herman (Cheuk) Lee
La Belle Farm, Inc.
P.O. Box 555
504 Stanton Corners Road
Ferndale, New York 12734

Copy by Certified Mail
Return Receipt Requested:

Mr. Herman (Cheuk) Lee
Bella Poultry, Inc.
P.O. Box 555
29 Fraser Road
Ferndale, New York 12734

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
NYSDEC
625 Broadway
Albany, New York 12233-4500

Dated: SEP 10 2012



NAME OF SECRETARY, Secretary
New York, NY