

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 JAN 27 AM 9:40

In the Matter of  
  
Feather Crest Farms, Inc.,  
  
Respondent  
  
NPDES Permit No. TXG920363

§ Docket No. CWA-06-2011-1702  
§  
§  
§ Proceeding to Assess a Class II  
§ Civil Penalty under Section 309(g)  
§ of the Clean Water Act  
§  
§ ADMINISTRATIVE COMPLAINT  
§

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 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 through 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. Feather Crest Farms, Inc. (“Respondent”) 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 commercial pullet/layer hen facility, located at 1437 State Highway 21 E. in Kurten, Brazos County, Texas (“facility”). The facility is a “Large” concentrated animal feeding operation (“CAFO”), as defined in Section 502(14) of the Act and 40 C.F.R. § 122.23(b)(4).

3. During the relevant time period, the facility was a “point source” of a “discharge” of “pollutants” with its process-generated wastewater and storm water runoff from land application fields to the receiving waters of the Navasota River. The Navasota River 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. 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. Respondent applied for and was issued, by TCEQ, a Texas Pollutant Discharge Elimination System (“TPDES”) program Concentrated Animal Feeding Operation (“CAFO”) Permit No. TXG920363 (“permit”), under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on October 17, 2004. During the relevant time period, 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 June 18, 2010, an EPA inspector conducted a compliance evaluation inspection and determined that the facility was violating its TCEQ-issued CAFO permit by land-applying wastewater on land application fields with a phosphorus concentration greater than 200 parts-per-million (“ppm”) without a TCEQ-approved nutrient utilization plan (“NUP”). Any runoff from phosphorus-saturated land application fields which enters a water of the United States is an

unauthorized discharge because such runoff does not meet the agricultural storm water exemption. According to rainfall records gathered by the EPA inspector, fifteen (15) significant rainfall events (greater than one inch) occurred between June 2009, and June 2010, as indicated in the table below.

Date	Rainfall
09/11/09	1.75
09/22/09	1.00
10/03/09	1.50
10/09/09	1.50
10/22/09	1.50
10/26/09	3.25
11/15/09	1.00
12/01/09	1.00
01/15/10	1.25
01/28/10	2.50
02/11/10	1.75
04/17/10	1.00
05/14/10	2.50
06/02/10	3.00
06/08/10	4.00

9. During each of these significant rainfall events, the facility illegally discharged contaminated storm water runoff from each of the land application fields with a soil phosphorus concentration greater than 200 ppm, which included land management units (“LMUs”) 8, 12A, and 12B, into nearby waters of the United States. The facility’s permit specifically prohibits land-applying manure to LMUs 12A, 12B, and 8.

10. On September 7, 2010, EPA issued to Respondent a Cease and Desist Administrative Order, Docket Number CWA-06-2010-1914, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Order required Respondent to:

- Cease and desist from land-applying wastewater to any land application fields with a soil phosphorous concentration of more than 200 ppm without a TCEQ-approved NUP; and
- within forty-five (45) days from the effective date of the Cease and Desist Order, to provide a written plan for complying with all requirements of the TCEQ-issued CAFO permit, including the development of a TCEQ-approved NUP. Part III.A.13(a)(1) of the TCEQ CAFO permit prohibits land application of wastewater to LMUs with more than 200 ppm soil phosphorus concentration unless such land application is in accordance with a TCEQ-approved NUP.

11. 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 \$157,500.

12. 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).

13. 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

14. 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 seventy thousand dollars (\$70,000.00).

15. 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

16. 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.

17. 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).

18. 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.

19. 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

20. 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

21. 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.

22. 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.

23. 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

24. 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.

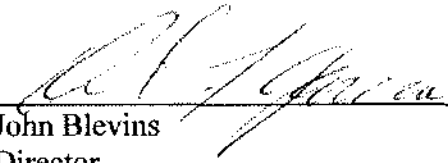
25. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's 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.

26. 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.

1/25/11  
Date

*for*   
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: Mr. David Elbel, Vice President  
Feather Crest Farms, Inc.  
801 N. Earl Rudder Fwy.  
Bryan, TX 77802

Copy first class postage prepaid: Ms. Susan Johnson, Manager  
Enforcement Section I, MC169  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

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

Dated: 1/27/11 