

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**



In the Matter of:

Andrew and Yvette Hudyma  
8157 Solomans Cross Court  
Millersville, MD 21108

and

Mountaire Farms of Delaware, Inc.  
29005 John J. Williams Hwy.  
Millsboro, DE 19966-4095

Respondents

Class II Proceeding Under  
Section 309(g) of the  
Clean Water Act

EPA Docket No. CWA-03-2009-0292

**CONSENT AGREEMENT  
and FINAL ORDER  
as to Andrew and Yvette Hudyma**

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III ("Complainant"), and Andrew and Yvette Hudyma ("Respondents"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and 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 ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), alleged in an administrative Complaint filed on September 30, 2009.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$11,000 per day for each day of violation, up to a total penalty amount of \$157,500.

## **II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

3. Respondents neither admit nor deny the factual allegations set forth in Section II of the Administrative Complaint on September 30, 2009.
4. Respondents admit the jurisdictional allegations contained in Section I of the Complaint.

## **III. CONCLUSIONS OF LAW**

5. As described in the Findings of Fact and Jurisdictional Allegations in the Administrative Complaint, Respondents have violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

## **IV. CONSENT AGREEMENT AND FINAL ORDER**

6. Respondents agree not to contest EPA's jurisdiction to issue and enforce this CAFO.
7. Respondents hereby expressly waive their right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consent to issuance of this CAFO without adjudication.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondents, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter, without further litigation or trial of any issues, is in the public interest and that entry of this CAFO is the most appropriate means of resolving the claims alleged in the Administrative Complaint.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondents' ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondents CONSENT to pay a civil penalty in the amount of \$2,500 in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

12. Respondents shall pay the total administrative civil penalty of \$2,500 for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By regular mail:

Regional Hearing Clerk  
U.S. EPA Region III  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

By Automated Clearinghouse (ACH):

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking  
Physical location of US Treasury facility:  
5700 Rivertech Court

Riverdale, MD 20737

Respondents shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

13. This CAFO shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.
14. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins

to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
16. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law not addressed in the Administrative Complaint.
17. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. Entry of this CAFO is a final settlement of all violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondents are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
19. The undersigned representative of Respondents certify that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to

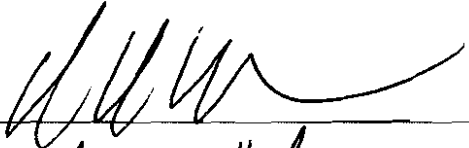
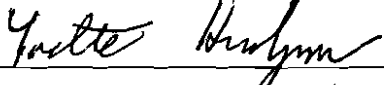
execute and legally bind that party to it.

20. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

#### **V. EFFECTIVE DATE**

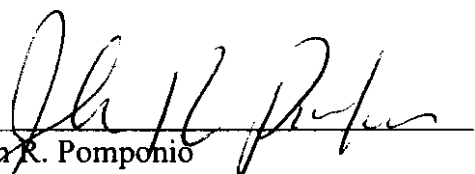
21. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

FOR RESPONDENTS ANDREW AND YVETTE HUDYMA:

~~By:~~   
Name: Andrew Hudymna  
~~By:~~   
Yvette C. Hudymna

*Andrew and Yvette Hudymna*  
EPA Docket No. CWA-03-2009-0292

FOR RESPONDENT U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III:

By:   
John R. Pomponio  
Director, Environmental Assessment and Innovation Division  
U.S. EPA Region III



**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| In the Matter of:                 | : | Class II Proceeding Under       |
|                                   | : | Section 309(g) of the           |
| Andrew and Yvette Hudyma          | : | Clean Water Act                 |
| 8157 Solomans Cross Court         | : |                                 |
| Millersville, MD 21108            | : |                                 |
|                                   | : |                                 |
| and                               | : | EPA Docket No. CWA-03-2009-0292 |
|                                   | : |                                 |
| Mountaire Farms of Delaware, Inc. | : |                                 |
| 29005 John J. Williams Hwy.       | : |                                 |
| Millsboro, DE 19966-4095          | : | <b>FINAL ORDER as to</b>        |
|                                   | : | <b>Andrew and Yvette Hudyma</b> |
| Respondents                       | : |                                 |


**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, 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, (*Consolidated Rules*)" codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves the Respondent from otherwise complying with the applicable requirements set forth in the CWA.

The Respondent is ordered to comply with the Payment Terms of the foregoing Consent Agreement.

Date: MAY 04 2010

  
\_\_\_\_\_  
Shawn M. Garvin  
Regional Administrator

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

By hand delivery:

Administrative Law Judge Barbara Gunning  
US EPA  
Mail Code 1900 L  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Regional Judicial Officer Renee Sarajian  
EPA Region III  
1650 Arch St.  
Philadelphia, PA 19103

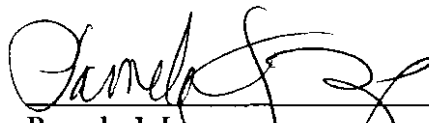
By first class, certified mail, return receipt requested:

Anthony P. Ashton, Esq.  
Gina M. Zawitoski, Esq.  
DLA Piper, LLP (US)  
6225 Smith Avenue  
Baltimore, MD 21209-3600

Stephen Smethurst, Jr., Esq.  
Matthew T. Mills, Esq.  
Adkins, Potts and Smethurst, LLP  
P.O. Box 4247  
Salisbury, MD 21803-4247

Date: \_\_\_\_\_

5/5/10

  
\_\_\_\_\_  
Pamela J. Lazos  
Sr. Asst. Regional Counsel  
US EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**SUBJECT:** Consent Agreement and Final Orders In the Matter of  
Anthony and Yvette Hudyma, et al., EPA Docket No. 03-  
2009-0292

**FROM:** John R. Pomponio, Director  
Environmental Assessment and Innovation Division

Marcia E. Mulkey  
Regional Counsel



**TO:** Shawn M. Garvin  
Regional Administrator

We request that you sign the Final Order ("CAFO") entering the Consent Agreement with Andrew and Yvette Hudyma ("Respondents") for violations of Section 404 of the Clean Water Act ("Act"), 33 U.S.C. §1344 as authorized by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section §1319(g).

Respondents, Andrew and Yvette Hudyma are the owners of property northeast of the town of Willards, Wicomico County, Maryland (the "Site"). Respondents constructed chicken houses in an approximately 3.6 acre wetlands area on the Site.

Respondents, Andrew and Yvette Hudyma have agreed to pay \$2,500 in settlement of this matter eliminating the need for litigation. In a parallel Consent Agreement, Mountaire has agreed to pay \$61,875 in settlement of this matter. We request that you approve the attached CAFO. Questions concerning this matter may be directed to Pamela J. Lazos, Sr. Assistant Regional Counsel, at ext. 2658.