

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§ Docket No. CWA-06-2020-1779
	§
Ogle Cattle Co.,	§
	§ Proceeding to Assess a
	§ Civil Penalty under Section 309(g)
	§ of the Clean Water Act
Respondent	§
	§ ADMINISTRATIVE COMPLAINT
Facility No. TXG920157	§

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 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, Ogle Cattle Co., 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 feed yard facility located at 312 Cattle Pen Rd., Bowie, Montague County, Texas (here in “the facility”). The facility is a “large” 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 Amon G. Carter Lake, a drinking water source for the City of Bowie.
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. TXG920157 (“permit”), under Section 402 of the Act, 33 U.S.C. § 1342, which became effective on September 22, 2004, and was last renewed on November 11, 2019. 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 February 6, 2020, EPA inspectors observed, during a reconnaissance inspection of the facility, that retention control structure No. 1 (RCS #1) was overflowing and discharging process wastewater into an adjacent water body, Brier Creek, that eventually discharges into Lake Amon G. Carter, in violation of the facility's CAFO permit.

8. As a follow up to the reconnaissance inspection, EPA conducted an unannounced inspection of the facility on February 20, 2020, to determine compliance with the facility's CAFO permit. During the inspection, EPA inspectors determined that the facility was violating its CAFO permit as described below:

- a. EPA inspectors observed that RCS #1 was overflowing and discharging process wastewater into a nearby water body, Brier Creek.
- b. Facility was not directing and containing into RCS #1 runoff (which is process wastewater) from an area (approximately 0.7 acres) located in the northeast corner of the open lot nearest to RCS #1.
- c. Facility was storing uncovered piles of manure for more than 30 days. Part III.A.9(b) of the CAFO permit requires that manure or sludge stored for more than 30 days must be stored within the drainage area of an RCS or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents runoff of contaminated storm water from the manure storage area.

- d. Facility failed to maintain a permanent pond marker in RCS #1, as required by Part III.A.10(c) of the CAFO permit.
  - e. Failure to maintain liner integrity by allowing woody vegetation and shrubs to grow on the embankment/berm of RCS #1, in violation of Part III.A.10(f)(3) of the CAFO permit.
  - f. Failure to maintain the normal operating wastewater level in RCS #1, as required by Part III.A.10(a) of the CAFO permit. The facility failed to dewater RCS #1 as required to maintain the normal operating level of the lagoon. According to records reviewed by EPA inspectors, weekly lagoon level readings revealed that RCS #1 was consistently above its pump-out mark beginning December 21<sup>st</sup>, 2019 until February 18<sup>th</sup>, 2020. Facility irrigation records indicated that there was no attempt made to dewater RCS #1 between the 25<sup>th</sup> of October 2019, and February 21<sup>st</sup>, 2020.
9. On May 11, 2020, EPA issued to Respondent Administrative Order (AO) Docket Number CWA-06-2020-1746, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). The AO required Respondent to:
- a. Take all the necessary steps to immediately stop any discharge of process wastewater from RCS #1 into Brier Creek;
  - b. Within 90 days from the effective date of the Order, provide EPA with a report documenting the activities conducted to stop the discharge of process wastewater into Brier Creek;

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 \$37,500.

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 twelve thousand dollars (\$12,000).

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.

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) 665-8403.

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

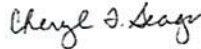


the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

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.

September 15, 2020

Date



Digitally signed by CHERYL SEAGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=CHERYL SEAGER,  
0.9.2342.19200300.100.1.1=#6001003951793  
Date: 2020.09.15 11:59:25 -0500

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. Larry Ogle, Owner  
Ogle Cattle Co.  
P.O. Box 1449  
Bowie, TX 76230  
oglecattle@aol.com

Copy by email Ms. Winona Henry, P.E., Regional Director  
Texas Commission on Environmental Quality, Region 3  
Winona.henry@tceq.texas.gov

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

  
Dated: 9/16/2020