UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

MAY 28 2013

CERTIFIED MAIL–RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 9526

Mr. Olke Andries Jongsma, Owner
Amelia Dairy
248 County Road 4310
Winnsboro, TX 75494-8519

Re: Cease and Desist Administrative Order
Docket Number: CWA-06-2013-1806
Permit Number: TXG920068

Dear Mr. Jongsma:

Enclosed is an Administrative Order (AO) issued to Amelia Dairy for violation of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). The violation was identified during a March 20, 2013 inspection, jointly conducted by the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) of your facility, located in Winnsboro, Texas, and designated as Permit Number TXG920068. The inspection results were discussed with you following the inspection. The violation alleged is for an unauthorized discharge of pollutants, specifically manure transported in storm water runoff, to a water in the State of Texas.

Effective upon receipt of this AO, you shall immediately cease and desist all unauthorized discharges of manure pollutants to tributaries of Brushy Creek, and comply with all provisions set forth in the enclosed AO. You are also required to comply with all information demands contained in the AO. The EPA is committed to ensuring compliance with the requirements of the CWA, and my staff will assist you in any way possible.

If you have any questions, please contact Dr. Abu Senkayi, of my staff, at (214) 665-8403.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Leroy Biggers, Regional Director
Texas Commission on Environmental Quality, Region 5

# U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 6
# FINDINGS OF VIOLATION, COMPLIANCE ORDER, AND INFORMATION DEMAND

In the Matter of Amelia Dairy, Respondent
Docket No. CWA-06-2013-1806; TPDES Permit No. TXG920068

## STATUTORY AUTHORITY

The following findings are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA"), by Sections 308 and 309(a) of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator delegated the authority to issue this Order to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Compliance Assurance and Enforcement Division.

## FINDINGS

1. Amelia Dairy ("Respondent") is a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At all times relevant to the violation alleged herein ("relevant time period"), Respondent owned or operated Amelia Dairy, a dairy operation located at 248 County Road 4310, approximately one mile east of Winnsboro, Wood County, Texas ("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 times relevant to this Order, the facility acted as a "point source" of a "discharge" of "pollutant[s]" to the receiving waters of Brushy Creek which is considered a water in the State. As a result, the Respondent and the facility were subject to the Texas Pollutant Discharge Elimination System ("TPDES") permit.

4. Respondent was issued a CAFO permit by the Texas Commission on Environmental Quality ("TCEQ"), Permit Number TXG920068, which became effective on October 9, 2009. 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 permitting and enforcement program.

5. When a state is authorized to administer an NPDES permit program pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), 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). According to Section 26.001(10) of the Texas Water Code, "Agricultural waste" means "waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals and processing facilities for agricultural products.

6. According to Section 26.001(21) of the Texas Water Code, "point source" includes any "concentrated animal feeding operation . . . from which pollutants or waste are or may be discharged into or adjacent to any water in the state."

7. According to Section 26.001(2) of the Texas Water Code, "to discharge" includes "to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions."

8. According to Section 26.001(13) of the Texas Water Code, "pollutant" includes "agricultural waste discharged into any water in the state."

9. On March 20, 2013, EPA and TCEQ inspectors conducted a compliance evaluation inspection and determined that the facility was violating its TCEQ-issued CAFO permit as described below:

a) At the time of the inspection, EPA inspectors observed that the facility was discharging process-generated wastewater from the calf feed lane and the heifer feed lane areas onto a denuded open lot. EPA and TCEQ inspectors noted that any storm water runoff from the denuded open lot and the calf feed lane and heifer feed lane areas would discharge into unnamed tributaries of Brushy Creek, and eventually, to Lake Cypress Springs and Lake Bob Sandlin, instead of discharging into properly designed Retention Control Structures ("RCSs"). Part III.A.6(d)(ii) of the TCEQ-issued CAFO general permit requires the facility to design, construct, operate, and maintain wastewater RCSs with adequate capacity to contain all process-generated wastewater from the production area, including runoff from the calf feed lane and heifer feed lane areas. The facility violated this requirement of the TCEQ CAFO general permit.
b) EPA inspectors observed that storm water runoff from the east end of the two freestalls and runoff from the manure piles at the manure screening area discharged into an open pasture instead of discharging into a properly designed RCS. Part III.A.6(d)(1)(ii) of the TCEQ-issued CAFO general

permit requires the facility to design, construct, operate and maintain wastewater RCSs with adequate capacity to contain all process-generated wastewater from the production area, including runoff from the freestalls and the manure piles at the manure screening area. The facility violated this requirement of the TCEQ CAFO general permit

c) EPA inspectors observed that runoff from the mortality composting area, which is located on the north side of RCS 3, discharges into a tributary of Brushy Creek, a water in the State, instead of discharging into a properly designed wastewater RCS. Part III.B.4 of the permit requires compost areas to be located within the drainage of the RCS and must be shown on the site map and accounted for in the RCS design calculations. By failing to contain storm water runoff from the mortality composting area into an RCS, the facility violated this requirement of the TCEQ CAFO permit.

d) EPA and TCEQ inspectors observed that piles of manure had been stored on LMU #1 for what appears to be a period of 3 to 4 months, which is longer than the thirty (30)-day temporary storage period authorized by Part III.A.8(c) of the TCEQ-issued CAFO general permit. Any storm water runoff generated from the improperly stored manure on LMU #1 discharged into a tributary of Brushy Creek, which is considered a water in the State.

e) EPA and TCEQ inspectors observed that the center pivot stop at the west side of LMU #1 is located in the drainage way to Brushy Creek, with no irrigation buffers to prevent the discharge of process-generated wastewater into the unnamed tributary of Brushy Creek. Part III.A.11(e)(1) prohibits the discharge of any agricultural waste into a waterbody. Discharging manure-laden storm water into a tributary of Brushy Creek is a violation of this requirement of the TCEQ CAFO permit.

SECTION 309(A)(3) COMPLIANCE ORDER

Based on these Findings and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders that Respondent shall take the following action upon receipt of this Order:

A. Immediately cease all unauthorized discharges of process-generated wastewater and storm water runoff from (1) the improperly stored manure piles on LMU #1; and (2) the improperly operated center pivot located on LMU #1.

B. Within thirty (30) days of the effective date of this Order, provide to EPA a written plan for addressing and eliminating, as quickly as possible, all unauthorized discharges of process-generated wastewater and storm water runoff from (1) the calf feed lane area and the heifer feed lane area; (2) the mortality composting area; and (3) the east end of the two freestalls into the nearby tributaries of Brushy Creek.

SECTION 308 INFORMATION DEMAND

Based on the foregoing Findings and pursuant to the authority of Section 308 of the Act, 33 U.S.C. § 1318, Respondent is required to do the following:

A. Within forty-five (45) days of the effective date of this Order, provide a written plan and schedule for complying with all the TCEQ CAFO permit requirements, including the requirement for maintaining adequate RCS storage capacity to contain all waste and process-generated wastewater plus storm water runoff during a 25-year, 24-hour storm event.

GENERAL PROVISIONS

Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review.

Issuance of this Section 309(a)(3) Compliance Order shall not be deemed an election by EPA to waive any administrative, judicial, civil or criminal action to seek penalties, fines, or other relief under the Act for the violations alleged herein or other violations which may become known to EPA. EPA reserves the right to seek any remedy available under the law which it deems appropriate.

Failure to comply with this Section 309(a)(3) Compliance Order, Section 308 Information Demand, or the Act may result in the initiation of an administrative penalty action by EPA or a civil judicial penalty action by the U.S. Department of Justice.

Compliance with this Order does not relieve Respondent of its obligation to comply with all applicable federal, state and local laws.

The effective date of this Order is the date it is received by the Respondent.

5·28·13
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division