



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

JUN 07 2013

CERTIFIED MAIL—RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 9854

Mr. Antoon Jacobs
Jacobs Dairy, LLC
1088 County Road 2341
Sulphur Springs, TX 75482

Re: Administrative Order, Docket Number: CWA-06-2013-1815
TPDES Permit Number: TXG920116

Dear Mr. Jacobs:

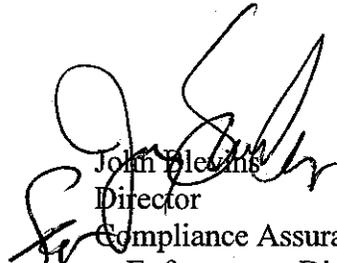
Enclosed is an Administrative Order (AO) issued to Jacobs Dairy, LLC, for violation of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.). The violation was identified during a March 18, 2013, inspection, conducted by the Environmental Protection Agency (EPA), of your concentrated animal feeding operation. The inspection results were discussed with you at the time of the inspection. The violation alleged is for an unauthorized discharge of a pollutant, specifically manure transported in storm water runoff, to a water in the state.

This AO does not assess a monetary penalty; however, it does require compliance with applicable federal regulations. The AO also contains other compliance deadlines and information demands. The EPA is committed to ensuring compliance with the requirements of the National Pollutant Discharge Elimination System (NPDES) program, and my staff will assist you in any way possible. Please reference AO Docket Number CWA-06-2013-1815 and NPDES Permit Number TXG920116 on your response.

Please also find enclosed an "Information Sheet" relating to the Small Business Regulatory Enforcement Fairness Act and a "Notice of Registrant's Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission.

If you have any questions, please contact Juan Ibarra, of my staff, at (214) 665-6498.

Sincerely,


John Blewett
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Mr. Leroy Biggers, Regional Director
TCEQ, Region 5



U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 6
FINDINGS OF VIOLATION AND COMPLIANCE ORDER

In the Matter of Jacobs Dairy, LLC, Respondent

Docket No. CWA-06-2013-1815

TPDES Permit No. TXG920116

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 Section 309(a) and 308 of the Clean Water Act (Act), 33 U.S.C. § 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. Jacobs Dairy, LLC ("Respondent"), is a limited liability corporation incorporated in the State of Texas, and is therefore 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 to the violation alleged herein ("relevant time period"), Respondent owned or operated a dairy located approximately 6 miles east of Sulphur Springs, east of the intersection of County Road 2335 and Private Road 6342, at 925 Private Road 6342, Hopkins County, Texas ("facility"). The facility is a Concentrated Animal Feeding Operation ("CAFO") as identified by Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.23(b).

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 East Caney 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"), which became effective on September 15, 2004, and was renewed on October 12, 2009. Beginning on the effective date, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the permit. 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 permit 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 ("TWC"), "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 TWC, "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 TWC, "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 TWC, "pollutant" includes "agricultural waste discharged into any water in the state."

9. On March 18, 2013, the EPA conducted an on-site investigation of the facility and observed the violations listed below in paragraph 10.

10. Section 301 of the Act, 33 U.S.C. § 1311, and TWC Title 2, Subchapter D, § 26.121 were violated in that the Respondent caused or allowed an unauthorized discharge of pollutants from the CAFO facility's production area into East Caney Creek as described below:

- a) Part III.B.2 of the TCEQ CAFO General Permit was violated in that the facility's two animal holding pens, located in the area of the calving pen and east of the concrete solids settling tank, had direct access to stock tanks situated on, or adjacent to, East Caney Creek, which allowed animals direct access to a water in the state.

- b) The facility violated 30 TAC § 321.37(d) and Part III.A.6(b) of the permit provisions in that the Respondent had two additional animal holding pens: one located in the calf hutch area, and one on the west side of Retention Control Structures ("RCSs") 1 and 2, and neither of these areas discharged into an RCS as required by the permit.
- c) TWC Title 2, Subchapter D, § 26.121 and 30 TAC § 285 were violated in that the Respondent allowed an unauthorized discharge of raw domestic sewage from the CAFO facility's two mobile homes (housing dairy workers) into East Caney Creek.
- d) 30 TAC § 321.39(b) and Part V.D. of the permit require that the embankment of RCS 3 be properly maintained so that wastewater from RCS 3 does not discharge into the fresh water stock tank located on East Caney Creek.

11. All discharges into East Caney Creek flow into White Oak Creek, thence into the Sulphur River, which is considered a water in the state.

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 take the following actions upon receipt of this Order:

- a) Upon receipt of this Order, Respondent shall immediately cease and desist all discharges of pollutants from the facility's animal holding pens and two mobile homes into East Caney Creek;
- b) Within thirty (30) days of receipt of this Order, Respondent shall comply with the 30 TAC § 321 Subchapter B CAFO regulations and Part III.A.b of the permit, requiring that 1) fencing be installed to prevent cattle access to the stock tanks; 2) all animal holding pens be contained within the watershed of an RCS; and 3) that RCS 3 be properly repaired and recertified by a Texas professional engineer.

SECTION 308 INFORMATION DEMAND

Based on the foregoing findings and pursuant to Section 308 of the Act, EPA orders that Respondent is required to:

- a. Within thirty (30) days of receipt of this Order, Respondent shall submit to EPA and the TCEQ a certified summary, including photographs, to document that all discharges have been addressed and stopped, and that corrective actions to address regulatory and permit violations have been corrected.

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, 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 and Section 308 Information Demand 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 violation 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.

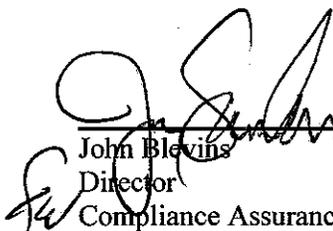
Failure to comply with this Section 309(a)(3) Compliance Order, or Section 308 Information Demand, or the Act may result in the initiation of an administrative penalty action by EPA or a civil judicial penalty action by the U.S. Department of Justice.

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.

6/17/2013

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division