



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

October 31, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7007 3020 0002 5102 0663

Mr. Fred Lueck
Aztex Dairy, Inc.
P.O. Box 159
Dublin, TX 76446

Re: Cease and Desist Administrative Order, Docket Number: CWA-06-2013-1711
TPDES Permit Number: WQ0004844000

Dear Mr. Lueck:

Enclosed is an Administrative Order (AO) issued to Aztex Dairy, Inc. for violation of terms of the concentrated animal feeding operation (CAFO) permit issued by the Texas Commission on Environmental Quality (TCEQ). Violations were identified during a September 25, 2012 inspection of your Aztex Dairy facility, conducted by the Environmental Protection Agency (EPA). The inspection results were discussed with you following the inspection. The violations alleged include, but are not limited to, the following:

- Failure to maintain and operate wastewater retention control structure (RCS) #2 in accordance with the requirements of the TCEQ-issued CAFO permit, resulting in the overtopping of RCS #2;
- failure to comply with the facility's CAFO permit requirement for pumping wastewater from RCSs # 1, 2, and 3, resulting in the overtopping of RCS #2; and
- conducting on-site composting activities without permit authorization.

Effective upon receipt of this AO, you shall immediately cease and desist the overflow of process-generated wastewater from RCS #2 and comply with all the requirements set forth in the CAFO permit. This AO also requires responses to certain information demands. The EPA is committed to ensuring compliance with the requirements of the Clean Water Act, 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,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Tony Walker, Regional Director
Texas Commission on Environmental Quality, Region 4



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

In the Matter of Aztex Dairy, Inc., Respondent

Docket No. CWA-06-2013-1711

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 has 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. Respondent, Aztex Dairy, Inc., 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 violations alleged herein ("relevant time period"), Respondent owned or operated Aztex Dairy, Inc., a dairy operation located at 1133 County Road 347, south of the intersection of FM 2156 and County Road 347, in Dublin, Erath County, Texas ("facility"). The facility is a concentrated animal feeding operation ("CAFO"), as defined by Section 502(14) of the Act and 40 C.F.R. § 122.23(b).

3. Respondent was issued a CAFO permit by the Texas Commission on Environmental Quality ("TCEQ"), Permit Number WQ0004844000, which became effective on June 12, 2010. The facility was previously authorized under EPA ID TX0121452, which was withdrawn. 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.

4. Agricultural waste (including animal manure) is included in the definition of "pollutants" set out in Section 502(6) of the Act, 33 U. S. C. § 1362(6) and 40 C.F.R. § 122.2.

5. On September 25, 2012, EPA inspectors conducted a compliance evaluation inspection and determined that the facility was violating its TCEQ issued CAFO permit as described below:

a) Failure to properly operate and maintain retention control structure ("RCS") #2 in accordance with the requirements of Section VI.A.5 (*RCS Operation and*

Maintenance) of its CAFO permit. At the time of the inspection, the inspectors observed that RCS #2 was overtopping its embankments in two locations and was overflowing. EPA inspectors observed that RCS #2 had previously overflowed prior to the September 25, 2012 site inspection. The overflow collected in a small pond located west-northwest of RCS #2. Analytical results of the wastewater samples collected from this small pond revealed high concentrations of ammonia nitrogen (53.9 mg/L), biochemical oxygen demand (190 mg/L) and orthophosphate phosphorus (1.17 mg/L). The high concentration of ammonia nitrogen in this pond confirms that previous overflows from RCS #2 resulted in the formation of this pond.

b) At the time of the inspection, milking parlor wastewater was entering RCS #2, and two pumps had failed, causing the screen separator basin to overflow into RCS #2. The failure of the pumps resulted in an overtopping of RCS #2.

c) Failure to comply with CAFO permit requirements for pumping wastewater from RCSs # 1, 2, and 3. The permit requires that RCSs # 1, 2, and 3 be operated in series with Surge Pond 2, and RCSs # 4 and 6 be operated in series with Surge Pond 1 (via pumps). However, EPA inspectors observed that the facility was pumping wastewater from RCS #2 into RCS #4, in violation of the permit requirement for operating RCSs # 1, 2, and 3. This violation was also documented during an inspection by TCEQ on April 19, 2012. In response to TCEQ's notice of violation, the facility agreed to submit a permit amendment to TCEQ by the end of July 2012 to address this violation. However, the violation had not been resolved at the time of the EPA inspection on September 25.

d) Failure to comply with the facility's CAFO permit requirement prohibiting composting activities without permit authorization. Section VI.A.6(e) of the TCEQ CAFO permit prohibits composting activities unless the facility amends its permit to specifically authorize composting activities. EPA inspectors discovered that the facility has been composting manure for as long as two years, in violation of this permit requirement. Windrows of manure solids were observed during the inspection.

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) Cease all overflows of process-generated wastewater from RCS #2.

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:

Within forty-five (45) days of the effective date of this Order, provide a written plan and schedule for complying with manure/wastewater storage and management requirements of the TCEQ CAFO permit, including certification by a licensed Texas professional engineer documenting that: (1) the facility has adequate storage and handling capacity to contain all waste and process-generated wastewater plus runoff during a 25-year, 24-hour storm event; (2) the integrity of the RCS #2 embankments has not been compromised and still meets engineering design specifications; and (3) the facility has repaired or replaced the pumps that failed and caused the overflow in RCS #2.

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.

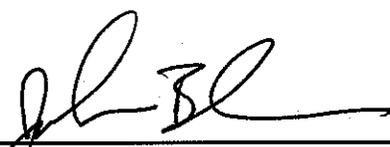
Failure to comply with this Section 309(a)(3) Compliance Order, Section 308 Information Demand, or the Act may result in the initiation of an administrative penalty action by EPA or a civil judicial penalty action by the U.S. Department of Justice.

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.

OCT 31 2012

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division