

US EPA ARCHIVE DOCUMENT



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Joan Schweigert
Turley Creek Farms
13281 Hawse Road
Linville, VA 22834

JUN 01 2010

Re: Administrative Order (CWA-03-2010-0307DN)

Dear Ms. Schweigert:

Enclosed is an Administrative Order (Order) issued this date pursuant to Section 309(a) of the Clean Water Act (CWA), as amended, 33 U.S.C. § 1319(a) and the inspection report documenting observations made by the United States Environmental Protection Agency's (EPA) during the April 14, 2010 inspection at your poultry grow-out operation. This Order contains a finding that you, as the owner of the poultry grow-out operation located at 13281 Hawse Road, Linville, Virginia (Va.) 22834, have violated the CWA and its implementing regulations by proposing to discharge pollutants from a concentrated animal feeding operation (CAFO) without a National Pollutant Discharge Elimination System (NPDES) permit.

You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent, or employee of your operation what actions each person must take to ensure compliance with its terms. This Order requires you to cease and desist discharging pollutants unless such discharges are in accordance with a NPDES permit and notify EPA of all actions taken to comply with the Order. Failure to comply with the terms of this Order constitutes a violation of Section 309 of the CWA, 33 U.S.C. § 1319, and may result in further enforcement action involving civil or criminal penalties.

Please note that, as indicated by its terms, this Order is effective upon receipt. If you require any information or assistance regarding this Order, please contact Ms. Kyle J. Zieba of my staff at (215) 814-5420.

Sincerely,

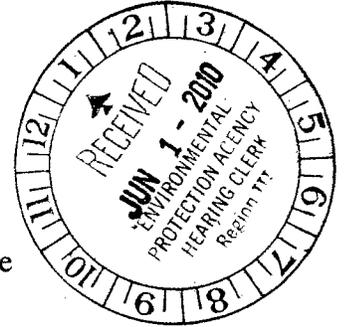
A handwritten signature in black ink, appearing to read "Jon M. Capacasa".

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Ellen Gilinsky, DEQ

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



In The Matter of:	Proceeding Under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a)
Joan C. Schweigert Turley Creek Farms 13281 Hawse Road Linville, VA 22834	Docket No. CWA-03-2010-0307DN
Respondent	FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

I. PRELIMINARY STATEMENT

1. This Order for Compliance is issued under the authority vested with the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who, in turn, has delegated it to the Director of the Water Protection Division (“Complainant”).
2. Joan C. Schweigert (“Respondent”) owns a parcel of land located at 13281 Hawse Road, Linville, VA 22834 (referred to herein as the “Facility”) and operates a broiler chicken operation and beef cattle operation at the Facility.

II. STATUTORY AND REGULATORY AUTHORITY

3. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
4. Section 402 of the CWA, 33 U.S.C. § 1342, provides for the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits which allow the discharge of pollutants under specified conditions.
5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
6. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

7. "Point Source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged."
8. "Animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
9. "Concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO or Medium CAFO in accordance with 40 C.F.R. § 122.23(b), or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c).
10. "Large CAFO," defined at 40 C.F.R. § 122.23(b)(4)(ix), is an AFO that stables or confines as many as or more than 30,000 laying hens, if the AFO uses a liquid manure handling system.
11. "Waters of the United States" are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.
12. "Process wastewater" is defined in 40 C.F.R. § 122.23(b)(7) as water "directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding."
13. "Manure" is defined by 40 C.F.R. § 122.23(b)(5) to include "manure, bedding, compost, and raw materials or materials commingled with manure or set aside for disposal."
14. The Department of Environmental Quality ("DEQ") is the agency within the Commonwealth of Virginia which is authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs to address violations of the CWA.

III. FINDINGS OF FACT

15. On March 10, 2010, EPA representatives conducted aerial surveillance in the area and discovered two, large uncovered piles of dark material at the southern ends of the poultry houses at the Facility.
16. On April 14, 2010, EPA representatives conducted a CWA inspection at the Facility, an AFO also known as "Turley Creek Farms", located at 13281 Hawse Road, Linville, Virginia.
17. Joan C. Schweigert is the owner and operator of the Facility and raises broiler chickens under a contract with Pilgrims Pride Corporation.

18. Based upon verbal statements made by the Respondent to EPA inspectors, Respondent confines approximately 100,000 broiler chickens in four poultry houses on the Facility for at least 45 days or more in any 12-month period.
19. Eric Ritchie is an employee of the Respondent and is responsible for the day-to-day operation of the broiler chicken operation including the handling of manure.
20. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the Facility where broiler chickens are confined.
21. The Facility is located within 250 feet and uphill from Turley Creek.
22. During the inspection on April 14, 2010, the EPA inspectors observed:
 - a. The remnants of two uncovered chicken litter piles located at the southern ends of poultry houses ("Houses") #1 and #2, and at the southern end of House #4;
 - b. That the remains of the uncovered chicken litter pile at the southern end of House #4 was located at an elevation of approximately 1,485 feet above sea level, based upon GPS readings taken by EPA inspectors;
 - c. That Turley Creek is located at an elevation of approximately 1,432 feet above sea level, based upon GPS readings taken by EPA inspectors;
 - d. That the remains of the uncovered chicken litter pile at the southern end of House #4 were located approximately 230 feet from Turley Creek;
 - e. A large gully running from the remains of the uncovered chicken litter pile at the southern end of House #4 toward Turley Creek;
 - f. That beef cows were grazing in the pasture to the west of House #4 and had access to Turley Creek;
 - g. That the Nutrient Management Plan ("NMP") did not identify and account for uncollected manure from the beef cows as part of the calculation for the agronomic land application of manure on pastures, which are also used for the land application of poultry litter; and,
 - h. That the NMP did not delineate poultry litter stockpiling areas or provide for emergency situations whereby litter might need to be stockpiled.
23. Based on verbal statements made by Respondent Schweigert and Mr. Ritchie to EPA inspectors, the dark piles discovered during the aerial surveillance were chicken litter and the litter pile at the southern end of House #4 was uncovered outdoors since at least mid-February 2010.
24. Upon information and belief, precipitation events occurred (i.e., snow fall, subsequent melt, rain, etc.) on the litter pile at the southern end of House #4 while it was uncovered.

25. At the time of the inspection and the date of the issuance of this Order, Respondent possessed a Virginia Pollution Abatement General Permit for Poultry Waste Management (#VPG260520).
26. At the time of the inspection and the date of the issuance of this Order, Respondent neither possessed a CWA NPDES Permit for the Facility nor had sought NPDES permit coverage for the Facility.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

27. Joan Schweigert, is an individual and therefore is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
28. The Facility includes four poultry houses that together confine 100,000 broiler chickens for 45 days or more in any twelve-month period. No crops, vegetation, forage growth, or post-harvest residues are sustained in the normal growing season over any portion of the Facility where the broiler chickens are confined.
29. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).
30. Since at least March 10, 2010, the Facility has had a liquid manure handling system due to the presence of uncovered poultry litter stockpiles and by design and operation proposed to discharge to Waters of the United States.
31. Respondent confines at least 30,000 broilers and uses a liquid manure handling system; therefore, the Facility is a Large CAFO, as that term is defined in 40 C.F.R. § 122.23(b)(4).
32. Turley Creek is a Water of the United States, as defined by 40 C.F.R. § 122.2.
33. Since at least the March 10, 2010, the Facility has been a Large CAFO that is designed, constructed, operated, and maintained in a manner such that it has proposed to discharge to Turley Creek. On information and belief, the Facility has discharged pollutants into Waters of the United States without a permit during precipitation events due to its design, construction, operation, and maintenance. This is a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and its implementing regulations.

V. ORDER FOR COMPLIANCE

34. Therefore, this 5th day of June, 2010, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to immediately cease and desist the discharge of pollutants into waters of the United States unless such discharges are in accordance with an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
35. Within 30 days of receipt of this Order, Respondent shall submit to EPA for review, comment, and acceptance documentation that sets forth the actions Respondent has taken to comply with paragraph 34 including completion dates for each action. This documentation shall include, but is not be limited to, an outline of actions taken to prevent discharges of pollutants from livestock to Waters of the United States that are not in accordance with an NPDES permit issued pursuant to Section 402 of the Act.

36. If Respondent continues proposing to discharge pollutants into Waters of the United States, Respondent shall be required, pursuant to this Order, to submit a Registration Statement to obtain a NPDES permit from DEQ within 30 days of notification by EPA. The Registration Statement shall be submitted to DEQ along with the Facility's approved NMP that meets the requirements of 40 C.F.R. § 122.42(e)(1). The NMP shall cite what actions will be taken to ensure that:
- a. No discharges occur from the production area;
 - b. No manure of any type is stored in a manner that allows exposure to precipitation;
 - c. Good housekeeping practices are implemented across the Facility that limit the exposure of manure to precipitation; and
 - d. The beef cows' manure is accounted for in the revised NMP.

A copy of all submitted documents shall also be sent to EPA for review and comment.

VI. NOTICE OF INTENT TO COMPLY

37. **Within ten business days** of the effective date of this Order, Respondent shall submit to EPA a notice indicating whether Respondent will comply with the Order. The Notice and all other requests outlined above shall be submitted to:

Ms. Kyle J. Zieba
United States Environmental Protection Agency
NPDES Enforcement Branch (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

VII. GENERAL PROVISIONS

38. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil or criminal action to seek penalties, fines or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act can result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 40 C.F.R. Part 19.
39. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, 33 U.S.C. § 1319(c), Respondent may be subject to a monetary fine and/or imprisonment and may become ineligible for certain contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
40. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of her obligations to comply with any applicable federal, state, or local laws or regulations.

VIII. EFFECTIVE DATE

41. The Order shall be effective upon receipt by Respondent.

Date: 6/1/10



Jon M. Capacasa, Director
Water Protection Division

