US EPA ARCHIVE DOCUMENT

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ryan L. Brady
32304 Greta Road
Atlantic, VA 23303-2151

SEP · 2 9 2010

Re: Administrative Order (CWA-03-2010-0416DN)

Dear Mr. Brady:

Enclosed is an Findings of Violation and Order for Compliance (Order) issued this date pursuant to Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1319(a). This Order contains a finding that you, as the owner and operator of the poultry grow-out operation located at 32304 Greta Road, Atlantic, VA 23303-2151, have violated the Act 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 facility what actions each person must take to ensure compliance with its terms. This Order requires you to seek NPDES permit coverage and to submit to EPA a copy of your permit application. The Department of Environmental Quality (DEQ) is the agency within the Commonwealth of Virginia that is authorized to administer the federal NPDES Program through Virginia Pollutant Discharge Elimination System (VPDES) permits. Failure to comply with the terms of this Order constitutes a violation of Section 309 of the Act, 33 U.S.C. § 1319, and may result in further enforcement action involving civil or criminal penalties.

You may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Please see the Small Business Information enclosure accompanying this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

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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. Ashley Toy at (215) 814-2774.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Ellen Gilinsky, DEQ

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

In The Matter of: Ryan L. Brady 32304 Greta Road Atlantic, VA 23303-2151 Respondent.	Proceeding Under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) Docket No. CWA-03-2010-0416DN FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

I hereby certify that the within is a true and correct copy of the original Findings of Viol and Order for Compliance filed in this matter.

Attorney for USEPA

I. PRELIMINARY STATEMENT

1. This Findings of Violation and Order for Compliance (Order) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA or the "Act"), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who has, in turn, delegated it to the Director of the Water Protection Division.

II. STATUTORY AND REGULATORY AUTHORITY

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. § 1342.

3. 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.

4. Pursuant to 40 C.F.R. § 122.21, any person who discharges or proposes to discharge pollutants from a concentrated animal feeding operations has a duty to submit a complete application as described in 40 C.F.R. § 122.23. Operations that become defined as CAFOs after April 14, 2003, but which are not new sources, must have sought permit coverage by February 27, 2009 or 90 days after becoming defined as a CAFO (whichever is later) if the operational change that makes the operation a CAFO would not have made it a CAFO prior to April 13, 2003. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur.

5. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines the term "person" to mean "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

6. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" or "discharge of pollutants" to include any addition of any pollutant or combination of pollutants to waters of the United States from any point source.

7. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term "pollutant" 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."

8. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term "point source" 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."

9. "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.

10. "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).

11. "Medium CAFO" defined at 40 C.F.R. § 122.23(b)(6)(i)(J) includes an animal feeding operation that stables or confines "37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system," and "either one of the following conditions are met: (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation."

12. "Waters of the United States" are defined by 40 C.F.R. § 122.2 to include interstate waters and tributaries thereto.

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. "Process wastewater" is defined by 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, direct contact swimming, washing, or spray control of animals; or dust control. 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."

15. The Department of Environmental Quality (DEQ) is the agency within the Commonwealth of Virginia which is authorized to administer the NPDES Permit Program through issuance of Virginia Pollutant Discharge Elimination System (VPDES) permits. EPA maintains concurrent enforcement authority with authorized states to address violations of the Act.

III. FACTUAL BACKGROUND

16. Ryan Brady (Respondent) is the owner and an operator of the poultry grow-out operation known as "Ryan Brady" located at 32304 Greta Road, Atlantic, VA 23303-2151 (hereinafter referred to as "the Facility"). Coordinates at the entrance to the Facility are 37° 54' 04.82"N, 75° 30' 39.36"W.

17. On July 19, 2010, EPA representatives conducted a CWA inspection at the Facility.

18. Respondent purchased the Facility in November 2005, but did not have birds occupying the newly renovated poultry houses until August 2006.

19. Respondent raises chickens, specifically broilers, under contract with Mountaire Farms Inc. (Mountaire), a subsidiary of Mountaire Corporation.

20. The Facility consists of three poultry houses (Houses 1-3) which house a total of 66,000 broilers for a total of 45 days or more in any twelve-month period. Mr. Brady had less birds placed, approximately 63,000, in the flock that was on-site during the inspection. Grow-out operations rotate flocks in a manner that exceeds 45 days of confinement over any twelve-month period.

21. Poultry houses by design are enclosed, roofed structures where no crops, vegetation, forage growth, or post-harvest residues are sustained in the normal growing season over any portion.

22. House 1 is located on one parcel (Parcel ID 0400A0000090A0), and Houses 2 and 3 are located on another parcel (Parcel ID 0400A000009100). These two parcels are adjacent and owned by Respondent.

23. During the inspection, EPA representatives observed manure on the ground near the north ends of the poultry houses and dust and feathers on the ground near the poultry house ventilation fans. Based on information and belief, dust from the ventilation fans includes

fine particulates of dander and manure. The manure was exposed in a manner so that it would come into contact with precipitation and generate process wastewater.

24. EPA representatives observed several drainage pathways in close proximity to the poultry houses and the poultry houses' ventilation fans. Drainage pathways are depicted in Attachment 1.

25. Main Ditch, Ditch 1, Ditch 2 and the Roadside Ditch are man-made ditches with piped culverts. Ditch 1 and Ditch 2 drain into the Main Ditch. Main Ditch and the Roadside Ditch drain to an unnamed waterway.

26. During the inspection, EPA representatives collected samples at various locations (see Attachment 2). Soil samples taken from Ditch 2 (01-01-SB-04 and 01-01-SB-05) were elevated above the background soil sample (01-01-SB-03) for total nitrogen (3900 mg/kg and 3290 mg/kg as compared to 929 mg/kg), total phosphorus (1730 mg/kg and 1640 mg/kg as compared to 1210 mg/kg), and potassium (1650 mg/kg and 1660 mg/kg as compared to 582 mg/kg). The soil sample taken from the Main Ditch (01-01-SB-06) was elevated above the background soil sample (01-01-SB-03) for total nitrogen (5260 mg/kg as compared to 929 mg/kg), total phosphorus (4170 mg/kg as compared to 1210 mg/kg), and potassium (1370 mg/kg as compared to 582 mg/kg).

27. The unnamed waterway is not mapped on the United States Geological Society (USGS) topographic map (see Attachment 3). The waterway is channelized. According to Mr. Brady, the county cleans it out as needed or approximately every two years. The waterway was dry at the time of the inspection. Mr. Brady said that water is present from November until June. Carp, catfish, and blue gill swim in the waterway based on evidence that Mr. Brady has seen of these species dead from what he believes to have been caused by low dissolved oxygen in the water. The unnamed waterway is man-made, and is hydrologically connected to downgradient waters, specifically an Unnamed Tributary to Assawoman Creek.

28. Unnamed Tributary to Assawoman Creek is mapped as an intermittent blue line stream on the USGS topographic map. The Unnamed Tributary to Assawoman Creek flows into Assawoman Creek which is mapped as a blue line stream. Assawoman Creek ultimately flows to the Atlantic Ocean.

29. According to the Southeast Regional Climate Center (http://www.sercc.com/), Snow Hill, Maryland, located 20 miles north of the Facility, receives 46.00 inches of precipitation annually, and Painter, Virginia, located 28 miles southwest of the Facility, receives 43.91 inches of precipitation annually.

30. At the time of the inspection, Respondent possessed a Virginia Pollution Abatement General Permit for Poultry Waste Management. Respondent's permit (#VPG250107) which become effective on November 17, 2006 and is set to expire on November 30, 2010.

31. At the time of the inspection and date of the issuance of this Order, Respondent neither possessed a VPDES permit, nor had not sought permit coverage for the Facility.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

32. Respondent is an individual and therefore is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

33. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1) that meets the definition of a Medium CAFO as defined by 40 C.F.R. § 122.23(b)(6)(i)(J) & (ii)(A) and thus is a "point source."

34. Manure and process wastewater are agricultural waste and thus are "pollutants."

35. The Unnamed Tributary to Assawoman Creek is a "water of the U.S."

36. Respondent owns and operates a point source that is designed, constructed, operated, and maintained in a manner that has proposed to discharge pollutants from man-made ditches to the Unnamed Tributary to Assawoman Creek during rain events generating runoff. Furthermore, Respondent has failed to submit a complete VPDES permit application by February 27, 2009, in violation of the Act and its implement regulations, specifically 40 CFR § 122.23(d).

V. ORDER FOR COMPLIANCE/INFORMATION REQUEST

Therefore, this 29th day of September, 2010, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to conduct the following activities:

37. **Within ninety (90) days** upon receipt of this Order, Respondent shall submit a complete permit application, including a site-specific Nutrient Management Plan (NMP), to DEQ for VPDES permit coverage. A copy of all submitted documents shall also be sent to EPA.

38. Upon obtaining permit coverage from DEQ, a copy of the permit and any correspondences shall be submitted to EPA **within ten (10) days**.

39. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ashley K. Toy
U.S. EPA Region III
1650 Arch Street (3WP42)
Philadelphia, PA 19103-2029

VI. NOTICE OF INTENT TO COMPLY

40. **Within ten (10) business days** of the effective date of this Order, Respondent shall submit to EPA a notice indicating whether Respondent will comply with the Order.

VII. GENERAL PROVISIONS

41. 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(g) of the Act, 33 U.S.C. § 1319(g).

42. 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.

43. 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 his/her obligations to comply with any applicable federal, state, or local law or regulations.

VIII. EFFECTIVE DATE

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

Date: 9/29/2010

Jon M. Capacasa, Director
Water Protection Division

Attachment 1

Attachment 2

Attachment 3

In Re: Brady,
Docket No. CWA-03-2010-0416DN

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Findings of Violation and Order for Compliance," to the following persons:

Mr. Ryan L. Brady
32304 Greta Road
Atlantic, VA 23303-2151

with copies to:

Ellen Gilinsky, Water Director
VA DEQ, Central Office
629 East Main Street
Richmond, VA 23219

and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 9/29/10

Andrew Duchovnay
Sr. Asst. Regional Counsel