Attachment 3-2087 of



HOUSE OF RAEFORD FARMS, INC.

Post Office Box 40 • Rose Hill, N.C. 28458 Phone (910) 289-3191 • 1-800-POULTRY Fax (910) 289-6975

October 23, 2009

Rick Shiver
Regional Supervisor
Surface Water Protection Section
Wilmington Regional Office
North Carolina Department of Environment and
Natural Resources
Division of Water Quality
127 Cardinal Drive Extension
Wilmington, North Carolina 28405

Re: House of Raeford Farms, Inc. -

Notice of Violation

Case Number NOV-2009-DV-0268 Incident Number: 200902230

Permit No. WQ0002005

Duplin County

Dear Mr. Shiver:

As you know, I am the Chief Executive Officer of House of Raeford Farms, Inc. In that capacity, I received your letter entitled, "Notice of Violation", dated October 15, 2009 and received in my office on October 16, 2009, in the above-referenced matter. Please accept this letter as the Company's response to the Notice of Violation.

A representative of our Company received a phone call from Linda Willis on Wednesday, September 9th concerning an "occurrence" that appeared to have been noted that day or within the recent past involving odors and the appearance of Cabin Branch behind our plant. A representative of the Company met Linda Willis on that day and inspected the area of the creek behind the plant. There was some amount of sludge-like material in the creek at that time, but its origin was unknown. Nevertheless, our Company engaged a contractor with a tanker truck to pump the foreign material out of the creek and into one of our two lagoons. The contractor pumped two loads of material out of the creek on that day. On the following Friday, the contractor pumped a total of four loads from the creek into the lagoon. In all, we estimate that we oversaw the pumping of approximately 1,000,031 gallons over a four day period into a Company lagoon from the creek. We purchased a dissolved oxygen meter and have continued to monitor the progress of that stream parameter since the day of purchase. We have been billed a total of \$20,000 for pumping and other mitigation services since September 9th.

BY: OCT 26 7000 PED

Rick Shiver October 23, 2009 Page 2

We report the foregoing in answer to one of the primary questions in your letter, regarding the extent of the Company's good faith efforts to mitigate the apparent condition of the creek since September 9th. Even though the Company has taken these extraordinary and expensive measures to mitigate conditions in the creek and restore it to a better condition, the Company has found no evidence that it was actually responsible for the presence of sludge-like material in the creek or its condition as of September 9th or afterwards. Neither your Department nor any of the other Agencies or others who have investigated the "occurrence" have presented credible evidence that the Company is or was responsible for the condition. In point of fact, there is no evidence that the Company created the condition nor participated in responsibility for the condition of the creek other than the absence of any evidence implicating any other party.

Allow me to review just a few of the undisputed facts that have been developed to this point:

- 1. The lagoons behind the plant had adequate freeboard and were not full or near dangerous levels during the last sixty (60) days, probably due to adequate management controls and relative dry weather for the season.
- 2. There is no evidence of any kind of "over topping" of the lagoons.
- 3. There is no evidence of lagoon breach or leakage.
- 4. There is no evidence, in view of the surrounding area and grounds, of a discharge of any other kind from the Company's lagoons.
- 5. Your Department and the Company engaged a laboratory in Wilmington, North Carolina to perform extensive water testing and analysis of the creek and lagoons. The laboratory reported inconclusive results: that is, there were similarities in the creek material and material in the lagoons but there were also distinct dissimilarities in the creek material and material in the Company's lagoons as well. The principal representing the laboratory could not conclude that the sludge material in the creek had originated from the Company lagoons although he reported a number of other potential sources and possible contributors in the nearby vicinity.
- 6. Various representatives from the Department and other agencies questioned representatives of the Company in some cases aggressively and found no testimonial confirmation of any inappropriate activity or conduct undertaken by any employees or agents of the Company.

In summary, the Company, in spite of significant efforts to determine the origin of the problems in the creek, was unable to obtain any objective evidence of Company responsibility, and your Department has no objective evidence of responsibility either. While there is some

Rick Shiver October 23, 2009 Page 3

circumstantial evidence which the Department uses to attempt to link the Company with the creek conditions, there are a number of other rational explanations and a number of other potentially responsible parties in the vicinity as well.

We are outraged by the contention in your letter that episodes of noncompliance in the distant pass constitute any reasonable connection with problems experienced in the creek during the last sixty (60) days. There has been no record of noncompliance regarding adequate freeboard or maintenance of sludge in the lagoons in recent memory, and we reject the baseless contention in your letter attempting to create such a connection now.

While the Company completed a fairly insignificant construction procedure connecting the primary and secondary lagoons during the early part of September, that procedure was completed without incident and without the necessity of taking extraordinary or illegal measures to pump down levels in either lagoon. Clearly, there was no motivation to pump down levels in lagoons that were already well managed and well within adequate freeboard levels, and there is no objective evidence that removal of lagoon material was attempted. This is all confirmed by the fact that the Company pumped over 1 million gallons of material from the creek to a lagoon, which has sufficient capacity to receive such material over several days in September with no apparent difficulty.

Finally, the conclusion in your letter that, "The EPA officials and the Division representative investigated the extent of the sludge in the branch and found that the waste and sludge source originated from the subject facility" is a misrepresentation and is untrue. Because of the inadequacy of evidence and information concerning the origin of the sludge in the creek, no representative of any agency ever made such a conclusion or statement in the presence of our representatives, in spite of the fact they were asked repeatedly.

Based on the foregoing and all of the information at our disposal, we respectfully request that you dismiss the Notice of Violation or alternatively recommend that the Director of the Division of Water Quality decline to undertake an enforcement action. The Department does not have credible evidence that the Company is any way responsible for the condition in the creek. Nevertheless, your representatives have told us on several occasions that the Company took extraordinary steps, particularly in light of the unknown origin of the problem, to restore the creek to a better condition and cooperated fully with the investigation that arrived at inconclusive results. The Company has gone out of its way to assist the Department and will not hesitate to work with the Department to correct any further conditions and find the real responsible parties who contributed to the conditions in the first instance; however, we will not stand by and allow false statements, innuendo and guess work to be used to scapegoat the Company.

Rick Shiver October 23, 2009 Page 4

We would be glad to meet with you further and provide whatever information is necessary to demonstrate to you and the other representatives of your Department that the Company is not responsible for the actions alleged in your letter of October 15th.

Sincerely,

Robert C. Johnson

Chief Executive Officer

House of Raeford Farms, Inc.

NORTH CAROLINA DIVISION OF WATER QUALITY - CIVIL PENALTY ASSESSMENT

Violator:

House of Raeford Farms Inc., Rose Hill Fresh/IQF Chicken Plant

County:

Duplin

Case Number:

DV-2009-0046

ASSESSMENT FACTORS

1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation;

The effect on water quality from mixing wastewater and sludge into Beaverdam Branch and Cabin Branch, both Class C-Sw waters of the State, (a violation of G.S. 143-215.1(a)(6)) includes: depleting dissolved oxygen below the stream standard for class C-Sw waters of the State (a violation of 15A NCAC 2B.0211(3)(b)), removing a best usage for secondary recreation (a violation of 15A NCAC 02B.0211(2)), presenting significant exposure potential for disease and pathogenic bacteria and viruses to both the public health and wildlife, aesthetic impairment to Beaverdam Branch and Cabin Branch due to floating sludge and sheen (a violation of 15A NCAC 02B.0211(3)(f)), and an increase in aquatic vegetation as a result of excessive inputs of nutrients. Depressed dissolved oxygen was measured in Beaverdam Branch four miles downstream at Highway 11 on September 23, 2009. Fish in that area were in distress.

2) The duration and gravity of the violation;

The violations were found on September 10, 2009. The impacts to Beaverdam Branch and Cabin Branch persisted through September 23rd, 2009. The dissolved oxygen in Beaverdam Branch at the Sheffield Road crossing (Station Location 3) on October 15, 2009 was 0.2 milligrams per liter. The dissolved oxygen had recovered by November 4th, 2009 at the Sheffield Road crossing (Station Location 3) to 6.2 milligrams per liter. The dissolved oxygen at this location remained at 6.7 milligrams per liter (above the water quality standard of 5 milligrams) into December. Biological oxygen demand levels were somewhat elevated at the Sheffield Road crossing (Station Location 3) on October 15th and November 4th, 2009, at 9.2 milligrams per liter and 9.1 milligrams per liter respectively. It is expected the duration for this environmental event would persist until the waste is fully digested by biological activity in the receiving stream. Large rain events are needed to flush this wastewater slug downstream eventually to the Northeast Cape Fear River where dilution can help minimize the impacts to the stream. Beaverdam is a narrow Branch that is anywhere from 10 to 20 feet across.

3) The effect on ground or surface water quantity or quality or on air quality;

The effects on surface waters were removal of best usage due to the floating sludge and film, depressed dissolved oxygen below water quality standards for Class C-Sw waters of the State, excessive input of nutrients resulting in excessive growth of aquatic vegetation and the input of excessive concentrations of fecal coliform bacteria which posed enormous public health concerns for exposure to disease causing viruses and bacteria.

4) The cost of rectifying the damage;

Damages cannot be rectified either short or long term as a result of the sludge and wastewater in Cabin Branch and Beaverdam Branch. No measures could be taken to remediate the effects of the sludge and wastewater in the receiving stream such as nutrient loading, depressed dissolved

Environmental Sr. Tech.	8.0 hrs@ 31.67/hr	\$253.36
Environmental Tech.	8.0 hrs@ 27.19/hr	<u>\$217.52</u>
	Total	\$1,784.83
	,	
T1 (00/10/2000)	111 miles@ 0.53/mi	\$58.83
Explorer (09/10/2009)	~	•
Expedition (09/15/2009)	125 miles@ 0.54/mi	\$67.50
Explorer (09/23/2009)	111 miles@ 0.53/mi	\$58.83
Expedition (09/23/2009)	186 miles@ 0.54/mi	\$100.44
	Total	\$285,60
	Total	\$2,070.43

Date

), 100

Matt Matthews
Environmental Program Manager
Division of Water Quality