### STATE OF NORTH CAROLINA

COUNTY OF DUPLIN

# NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CASE NO.: DV-2009-0046

IN THE MATTER OF ROBERT C. JOHNSON, CEO HOUSE OF RAEFORD FARMS, INC. ROSE HILL FRESH/IQF CHICKEN	) ) )	
PLANT FACILITY	) ) )	FINDINGS AND DECISION ANDASSESSMENT OF CIVIL PENALTIES
FOR VIOLATION OF:	j	,
N.C.G.S. §143-215.1(a)(6) AND WQ0002005	Ś	

Acting pursuant to delegation provided by the Secretary of the Department of Environment and Natural Resources, I, Jeff Poupart, Point Source Branch Chief for the Division of Water Quality (DWQ), make the following:

# I. <u>FINDINGS OF FACT</u>:

- A. House of Raeford Farms, Inc. is a corporation organized and existing under the laws of the State of North Carolina.
- B. House of Raeford Farms, Inc. operates a chicken processing facility, the Rose Hill Fresh, IQF Chicken Plant, that is located at 3333 U.S. Highway 117 South, in Rose Hill, North Carolina. The facility does not have an NPDES Permit that allows the discharge of treated or untreated process wastewater to surface waters of the State.
- C. On September 10, 2009, Geof Kegley and Linda Willis with the DWQ Wilmington Regional Office ("Division Representatives") inspected the House of Raeford Farms Inc., Rose Hill Fresh ("HORF-Rose Hill") facility located at 3333 U.S. Highway 117 South, Rose Hill, North Carolina. The inspection was the result of a notification from a concerned citizen that Beaverdam Branch at the Sheffield Road and Brooks-Quinn Road crossings had a foul odor.
- D. On September 10, 2009, Division Representatives observed a film on the surface of the water at both Beaverdam Branch crossings; Sheffield Road and Brooks-Quinn Road.



- E. On September 10, 2009, dissolved oxygen was measured at both Beaverdam Branch crossings:
  - (1) Sheffield Road crossing = 0.19 milligrams per liter at a depth of 0.1 meters, and
  - (2) Brooks-Quinn Road crossing = 0.22 milligrams per liter at a depth of 0.3 meters.
- F. On September 15, 2009, Division Representatives met with Joe Teachey at the HORF-Rose Hill facility and requested access to the area of the facility located adjacent to Cabin Branch, directly behind their secondary wastewater lagoon. The Division Representatives observed Cabin Branch filled with sludge and had wastewater-like characteristics. Floating sludge was seen on the surface of Cabin Branch beginning directly behind their secondary wastewater lagoon and extending downstream to the confluence of Cabin Branch, and the lake behind the Parker Bark facility.

Kenneth Rhame and Kevin LaPointe, of the U.S. Environmental Protection Agency also conducted an investigation.

- G. No sludge was observed by Division or EPA representatives upstream of the HORF-Rose Hill facility at any time between September 10<sup>th</sup> and 23<sup>rd</sup>, 2009.
- H. The low dissolved oxygen condition in Beaverdam Branch persisted through September 23<sup>rd</sup>. Dissolved oxygen measurements taken on September 23<sup>rd</sup> were:
  - (1) Sheffield Road crossing = 0.5 milligrams per liter at depths of 0.1 and 1.0 meter
  - (2) Brooks-Quinn Road crossing = 0.14 milligrams per liter at a depth of 1.0 meter.
  - (3) Beaverdam Branch at Highway 117 just north of the Parker Bark facility = 0.6 milligrams per liter
- I. Both Cabin Branch and Beaverdam Branch are classified as Class C-Sw waters of the State in the Cape Fear River Basin. The dissolved oxygen standard listed in 15A NCAC 2B .0211(3)(b) for waters classified as C-Sw is not less than a daily average of 5.0 milligrams per liter with a minimum instantaneous value of not less than 4.0 milligrams per liter; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions.
- J. The best usage for Class C-Sw waters as defined in 15A NCAC 2B .211(3)(b) states waters shall not make water unsafe or unsuitable for aquatic life and wildlife or impair the water for any designated uses. The floating solids and sludge observed in Cabin Branch and Beaverdam Branch impeded such use.

- RIVER WAS

K. The costs to the State of the enforcement procedures in this matter totaled \$1,357.95.

Based upon the above Findings of Fact, I make the following:

#### II. <u>CONCLUSIONS OF LAW:</u>

- A. The HORF-Rose Hill facility is a "person" within the meaning of N.C. Gen. Stat. §143-215.6A pursuant to N.C. Gen. Stat. §143-212(4).
- B. The HORF-Rose Hill facility does not have an NPDES permit that allows the discharge of sludge or wastewater generated from chicken processing.
- C. Beaverdam Branch and Cabin Branch constitute waters of the State within the meaning of N.C. Gen. Stat. §143-215.1(a)(6) pursuant to N.C. Gen. Stat. §143-212(6).
- D. The HORF-Rose Hill facility violated N.C. Gen. Stat. §143-215.1(a)(6) by causing or permitting a waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications.
- E. The HORF-Rose Hill facility violated 15A NCAC 2B .0211(3)(b) for causing the depletion of oxygen in Cabin Branch and Beaverdam Branch below the water quality standard for class C-Sw waters of the State.
- F. The HORF-Rose Hill facility violated 15A NCAC 2B .0211(3)(c) for depositing floating solids and sludge in Cabin Branch and Beaverdam Branch impairing it for its best use.
- G. The HORF-Rose Hill facility may be assessed civil penalties in this matter pursuant to N.C. Gen. Stat. §143-215.6A, which provides that a civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed against any person who (1) violates any classification, standard, limitation or management practice established pursuant to N.C. Gen. Stat. §143-215.
- H. The State's enforcement costs in this matter may be assessed against HORF-Rose Hill facility pursuant to N.C. Gen. Stat. §143-215.3(a)(9) and N.C. Gen. Stat. §143B-282.1(b)(8).
- I. The Director of the Division of Water Quality, pursuant to delegation provided by the Secretary of the Department of Environment and Natural Resources, has the authority to assess civil penalties.

Based upon the above Findings of Fact and Conclusions of Law, I make the following:

## III, <u>DECISION</u>:

Accordingly, House of Raeford Farms Inc. Rose Hill Fresh/IQF Chicken Plant facility is hereby assessed a civil penalty of:

\$ <u>25,000</u>	For violation of N.C. Gen. Stat. §143-215.1(a)(6); causing or permitting waste to be discharged to or in any manner intermixed with the waters of the State in violation of water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of the Article.
<u>\$25,000</u>	For violation of 15A NCAC 2B .0211(3)(b); violating the dissolved oxygen water quality standard for Class C-Sw waters of the State.
\$ 25,000	For violation of 15A NCAC 2B .0211(3)(c); by allowing settleable solids and sludge in excess of the water quality standard for Class C-Sw waters of the State.
\$ <u>75,000</u>	TOTAL CIVIL PENALTY
\$ <u>1,357.95</u>	Enforcement Costs
\$76,357.95	TOTAL AMOUNT DUE

Pursuant to N.C. Gen. Stat. §143-215.6A(c), in determining the amount of the penalty I have taken into account the Findings of Fact and Conclusions of Law and the factors set forth at N.C. Gen. Stat. §143B-282.1(b), which are:

- (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;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;

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- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

Jeff Poupart

Point Source Branch Chief Division of Water Quality

Surface Water Protection Section