

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

WATERKEEPER ALLIANCE, INC.,)	
)	
Plaintiff,)	
)	Civil No. 1: 10-cv-00487-WMN
v.)	
)	
ALAN AND KRISTIN HUDSON FARM,)	
<i>et al.</i> ,)	
)	
Defendants.)	

ANSWER OF ALAN AND KRISTIN HUDSON FARM

Alan and Kristin Hudson Farm (õHudson Farmö), by its attorneys, answers the Complaint as follows:

1. Hudson Farm admits that this action is brought under the citizen suit provisions of the Clean Water Act as asserted in the first sentence of Paragraph 1 of the Complaint. Hudson Farm denies the remainder of the allegations in Paragraph 1.
2. Hudson Farm admits that Paragraph 2 of the Complaint correctly describes the relief sought.
3. Hudson Farm denies the allegations of Paragraph 3 of the Complaint.
4. Hudson Farm admits that Plaintiff Waterkeeper gave notice to Hudson Farm on or about December 17, 2009 of its intent to file suit against the defendants. Hudson Farm denies that Plaintiff Waterkeeper or anyone else gave notice of the violations specified in the complaint, and denies that the notice provided complied with 33 U.S.C. § 1365(b)(1)(A). Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations

concerning the notice provided to Perdue Farms Incorporated (‘Perdue’), to the Administrator of the United States Environmental Protection Agency (EPA), to the regional administrator of EPA, to the United States Attorney General, and to the State of Maryland. Hudson Farm admits that exhibit A is a copy of the letter provided to it on or about December 17, 2009.

5. Hudson Farm admits that 60 days have passed since it received the letter attached as Exhibit 1, but denies all other allegations of the first and second sentences of Paragraph 5. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations in the third sentence of Paragraph 5 of the Complaint

6. Hudson Farm admits that venue is proper in the United States District Court for the District of Maryland.

7. Paragraph 7 of the Complaint will be stricken as a result of the Court’s granting, in part, Hudson Farm’s motion to dismiss. To the extent that Hudson Farm is required to respond to Paragraph 7, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint will be stricken as a result of the Court’s granting, in part, Hudson Farm’s motion to dismiss. To the extent that Hudson Farm is required to respond to Paragraph 8, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding the employment of Kathy Phillips. Hudson Farm denies the accuracy of the description of the organization known as the Assateague Coastal Trust (ACT) contained in the first, second and third sentences of Paragraph 8 of the Complaint.

9. Paragraph 9 of the Complaint will be stricken as a result of the Court’s granting, in part, Hudson Farm’s motion to dismiss. To the extent that Hudson Farm is required to

respond to Paragraph 9, Hudson Farm lacks knowledge or information sufficient to form a belief concerning the membership of ACT, as alleged in the first and second sentences of Paragraph 9 of the Complaint, and denies the other allegations in the second sentence. Hudson Farm denies the allegations in the third, fourth and fifth sentences of Paragraph 9 of the Complaint. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding the activities of ACT members as described in the sixth sentence of Paragraph 9 and the subparts of that sentence.

10. Paragraph 10 of the Complaint will be stricken as a result of the Court's granting, in part, Hudson Farm's motion to dismiss. To the extent that Hudson Farm is required to respond to Paragraph 10, Hudson Farm denies the allegations of Paragraph 10.

11. Paragraph 11 of the Complaint will be stricken as a result of the Court's granting, in part, Hudson Farm's motion to dismiss. To the extent that Hudson Farm is required to respond to Paragraph 11, Hudson Farm denies the allegations of Paragraph 11.

12. Paragraph 12 of the Complaint will be stricken as a result of the Court's granting, in part, Hudson Farm's motion to dismiss. To the extent that Hudson Farm is required to respond to Paragraph 12, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12 of the Complaint.

13. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13 of the Complaint.

14. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 14 of the Complaint.

15. Hudson Farm admits the allegations in the first sentence of Paragraph 15 of the Complaint. Hudson Farm denies the other allegations of Paragraph 15 of the Complaint.

16. Hudson Farm admits the allegation of the first sentence of Paragraph 16 of the Complaint but asserts that Perdue's proper name is Perdue Farms Incorporated. Hudson Farm admits the allegations that it maintains a contract with Perdue pursuant to which the Hudsons raise poultry in accordance with a Poultry Producer Agreement. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Perdue's status as an "integrator." The allegations of the second sentence of Paragraph 16 of the Complaint are otherwise denied. The allegations of the third sentence of Paragraph 16 of the Complaint are denied.

17. Paragraph 17 of the Complaint contains descriptive matter as to which no response is required. To the extent that a response is required, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint contains descriptive matter as to which no response is required. To the extent that a response is required, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint contains descriptive matter as to which no response is required. To the extent that a response is required, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 19 of the Complaint.

20. Paragraph 20 of the Complaint contains descriptive matter as to which no response is required. To the extent that a response is required, Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20 of the Complaint.

21. Paragraph 21 of the Complaint contains a legal conclusion to which no response is necessary.

22. Paragraph 22 of the Complaint contains a legal conclusion to which no response is necessary.

23. Paragraph 23 of the Complaint contains a legal conclusion to which no response is necessary.

24. Paragraph 24 of the Complaint contains a legal conclusion to which no response is necessary.

25. Paragraph 25 of the Complaint contains a legal conclusion to which no response is necessary.

26. Hudson Farm acknowledges that 40 C.F.R. § 122.23 defines concentrated animal feeding operations, or CAFOs, but denies that the entirety of the Hudson Farm, consisting of 300 acres, or all of its operations, is a CAFO.

27. Hudson Farm denies the characterization in Paragraph 27 of the Complaint of the Maryland CAFO NPDES permit and states that the permit speaks for itself.

28. Hudson Farm admits that Alan Hudson submitted a notice of intent on behalf of himself and Kristin Hudson to be covered under the Maryland CAFO permit on or about

February 26, 2009. The remaining allegations of the first and second sentences of Paragraph 28 are denied.

29. Hudson Farm admits that the Maryland Department of the Environment sent a compliance agreement to the Hudson Farm on or about November 5, 2009. It could not obtain coverage under the permit due to staffing shortages within State government. The compliance agreement speaks for itself and therefore the remaining allegations of Paragraph 29 are denied.

30. Hudson Farm denies the allegations in Paragraph 30, except that to the extent that Paragraph 30 of the Complaint describes the terms of the Maryland CAFO NPDES permit, that document speaks for itself and the remaining allegations of Paragraph 30 are thus denied.

31. Hudson Farm denies the allegations of Paragraph 31.

32. With regard to the first two sentences of Paragraph 32 of the Complaint, Hudson Farm admits that drainage ditches surround the Hudson Farm, denies that the entire Hudson Farm is a CAFO, and denies that drainage ditches surround the production area of the Hudson Farm CAFO. Hudson Farm admits the allegations of the second, third and fourth sentences of Paragraph 32 of the Complaint.

33. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 33 of the Complaint.

34. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 34 of the Complaint.

35. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 35 of the Complaint.

36. Hudson Farm denies the allegations of Paragraph 36 of the Complaint.

37. Hudson Farm lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 37 of the Complaint.

38. Hudson Farm denies the allegations of Paragraph 38 of the Complaint that it made any discharge alleged in the Complaint.

39. Hudson Farm admits the allegations of Paragraph 39 of the Complaint.

40. Perdue's contractual relationship with Alan and Kristin Hudson is described in the Poultry Producer Agreement, attached as Exhibit B to Perdue's Motion to Dismiss, which agreement speaks for itself. The allegations of Paragraph 40 are otherwise denied.

41. Hudson Farm denies the allegations of Paragraph 41 of the Complaint as they relate to Hudson Farm.

42. Hudson Farm admits the allegations of Paragraph 42 of the Complaint.

43. Hudson Farm admits the allegations of Paragraph 43 of the Complaint as they relate to Hudson Farm.

44. Hudson Farm admits the allegations of Paragraph 44 of the Complaint as they relate to Hudson Farm.

45. Hudson Farm admits the allegations in the first sentence of Paragraph 45 of the Complaint as they relate to Hudson Farm. Because Hudson Farm does not understand the meaning of the phrase "are influenced" in the last sentence, it lacks knowledge or information sufficient to form a belief about the truth of the allegations in that sentence.

46. Perdue's relationships with Hudson Farm are governed by contracts voluntarily entered into by the parties thereto, which contracts speak for themselves. Accordingly, Hudson Farm denies the allegations of Paragraph 46.

47. Hudson Farm admits that Perdue's staff makes periodic visits to the chicken houses in which Perdue chickens are raised, but otherwise denies the allegations of Paragraph 47 of the Complaint.

48. Hudson Farm denies the allegations of Paragraph 48 of the Complaint.

49. Paragraph 49 of the Complaint contains a conclusion of law to which no response is necessary. To the extent that it contains any allegations of fact, or a response is otherwise required, Hudson Farm denies the allegations of Paragraph 49.

50. Paragraph 50 of the Complaint contains a conclusion of law to which no response is necessary. To the extent that it contains any allegations of fact, or a response is otherwise required, Hudson Farm denies the allegations of Paragraph 50.

51. Paragraph 51 of the Complaint contains a conclusion of law to which no response is necessary. To the extent that it contains any allegations of fact, or a response is otherwise required, Hudson Farm denies the allegations of Paragraph 51.

Count 1

52. In response to Paragraph 52 of the Complaint, Hudson Farm incorporates its responses to Paragraphs 1 to 51 of the Complaint.

53. Paragraph 53 of the Complaint contains a legal conclusion to which no response is necessary.

54. Hudson Farm denies the allegation of Paragraph 54 of the Complaint that it discharges pollutants.

55. Hudson Farm denies the allegations of Paragraph 55 that it discharged and/or discharges pollutants into the waters of the United States.

Count 2

56. In response to Paragraph 56 of the Complaint, Hudson Farm incorporates by reference its responses to Paragraph 1 ó 55 of the Complaint.

57. Paragraph 57 contains a legal conclusion to which no response is necessary.

58. Hudson Farm denies the allegations of the first sentence of Paragraph 58. The second sentence of Paragraph 58 of the Complaint is an incomplete description of some of the terms of the MD CAFO permit, which permit speaks for itself.

59. Hudson Farm denies the allegations of Paragraph 59 that Hudson Farm has discharged pollutants or will discharge pollutants from the Hudson Farm to the waters of the United States.

60. Hudson Farm denies any allegation of Paragraph 60 of the Complaint.

RESPONSE TO PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Hudson Farm requests that Plaintiff's prayer for declaratory relief, injunctive relief, penalties, attorney's fees, and costs be denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The claims contained in the Complaint are pre-empted in whole or in part by the Clean Water Act (CWA) and/or federal and/or state laws and regulations that exempt poultry integrators from the relevant permitting requirements.

SECOND AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over Hudson Farm because Plaintiffs' 60-Day Notice was inadequate in that Plaintiffs failed to give notice to Hudson Farm of the activities about which the suit was brought.

THIRD AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over Hudson Farm because Plaintiffs' 60-Day Notice was inadequate in that Plaintiffs failed to provide adequate notice of the dates on which the alleged violations occurred.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim because to the extent that the Complaint identifies any violations of the CWA, they are the result of the State's inability to process the applications for permits that it has received.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim under the CWA because the M.D.E. has already taken enforcement action in connection with the allegations in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim under the CWA because they cannot establish a continuing violation.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim under the CWA because they cannot establish that the Hudson Farm CAFO was the source of any of the pollutants allegedly found in surrounding waters.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2010, the foregoing Answer was served on the following via ECF:

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