

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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CLERK'S OFFICE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Northern Division

BY _____ DEPUTY

ASSATEAGUE COASTKEEPER,
9931 Old Ocean City Blvd.
Berlin, MD 21811

ASSATEAGUE COASTAL TRUST,
9931 Old Ocean City Blvd.
Berlin, MD 21811
Worcester County

KATHY PHILLIPS,
P.O. Box 819
Ocean City, MD 21843
Worcester County

and

WATERKEEPER ALLIANCE, INC.
50 South Buckhout Street
Suite 302
Irvington, NY 10533

Plaintiffs,

v.

ALAN & KRISTIN HUDSON FARM
9101 Logtown Rd,
Berlin, MD 21811
Worcester County

and,

PERDUE FARMS INC.
31149 Old Ocean Rd.,
Salisbury, MD 21804
Wicomico County

Defendants.

Civil Action No. _____

EXHIBIT A



**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 17, 2009

Alan and Kristin Hudson Farm
c/o Alan and Kristin Hudson
9178 Old Ocean City Rd.
Berlin, MD 21811

Perdue Farms, Inc.
Registered Agent
31149 Old Ocean Rd.
Salisbury, MD 21804

RE: Notice of Intent to Sue for Violations of the Clean Water Act

To Whom It May Concern:

This letter constitutes the Assateague Coastkeeper's and Waterkeeper Alliance's ("Plaintiffs") notice of intent to sue Alan and Kristin Hudson Farm ("Hudson Farm") and Perdue Farms, Inc. (collectively, "Defendants") pursuant to Section 505 of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1365, for illegal operations/discharges at the Hudson Farm Concentrated Animal Feeding Operation ("CAFO"). Specifically, this letter gives notice of intent to seek redress for the ongoing discharge of pollutants into the Pocomoke River, in violation of the CWA.

The Clean Water Act prohibits the discharge of pollutants from a point source to the waters of the United States except pursuant to and in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit. 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The Act defines "pollutant" to include solid waste, biological materials, and agricultural waste discharged into water. 33 U.S.C. § 1362(6). "Point source" is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation ... from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Regulations promulgated pursuant to the Clean Water Act state that, "[c]oncentrated animal feeding operations are point sources subject to the NPDES permit program." 40 C.F.R., pt. 122.23(a). Therefore, the discharge of pollutants associated with poultry waste into waters of the United States from a concentrated animal feeding operation constitutes a regulated discharge of a pollutant from a point source and is prohibited unless in compliance with an NPDES permit.

CLEAN WATER  STRONG COMMUNITIES

50 S. Buckhout Street, Ste. 302, Irvington, NY 10533 Tel. 914.674.0622 Fax. 914.674.4560 www.waterkeeper.org

Plaintiffs Assateague Coastkeeper and Waterkeeper Alliance are both advocacy member organizations concerned with water quality and maintaining waterways for the use and enjoyment of its members and the general public. Assateague Coastkeeper, Kathy Phillips, files this notice letter in her capacity as Coastkeeper and in her own individual capacity as a person harmed by the discharges of pollutants alleged herein. Defendant Alan and Kristin Hudson Farm is a poultry CAFO located at 9101 Logtown Rd in Berlin, Maryland. With 80,000 birds and longstanding, open storage of manure, this facility is considered a large CAFO under applicable regulations.¹ Defendant Perdue Farms, Inc.² is an "integrator" who, upon information and belief, maintains a contract with Alan and Kristin Hudson Farm under which Hudson Farm raises poultry on behalf of, and for the benefit of, Perdue Farms, Inc.

Hudson Farm is discharging pollutants into navigable waters of the United States on a continuous and ongoing basis without a NPDES permit in violation of the CWA. Although our research indicates that Hudson Farm submitted a Notice of Intent with the Maryland Department of the Environment to be covered under the MD CAFO permit, this permit has not yet come into effect. In the event that the permit is found to be in effect and that the Hudson Farm is deemed to be covered by it, the facility is, alternatively, in violation of a zero discharge permit. The MD CAFO permit prohibits any discharges of pollutants to surface waters of the State from CAFO production areas, unless it results from a storm event greater than the 25-year, 24-hour storm. NPDES Permit No. MDG01 Part B.2.

Our investigation revealed that Hudson Farm stockpiles uncovered poultry manure next to a drainage ditch in its production area. This longstanding manure pile is a continual and ongoing source of pollutants. In particular, during and after each rain event, this manure stockpile discharges pollutants into a field ditch that drains to the Franklin Branch, which in turn flows to the Pocomoke River, a navigable water of the United States. The Pocomoke, in turn, empties into the Chesapeake Bay. Both the Pocomoke River and the Chesapeake Bay are listed as nutrient impaired waters under the CWA. Photographs further reveal that discrete conveyances in the form of trenches exist from the manure stockpile to the field ditch to facilitate this run off. Results from downstream water sampling taken on October 30th, November 11th, 12th, 16th and December 9th, 2009 show high levels of pollutants including, fecal coliform, E. coli, phosphorus, nitrogen,

¹ The United States Environmental Protection Agency and the CAFO regulations define a large poultry CAFO as any animal feeding operation that has a liquid manure handling system and confines 30,000 or more laying hens or broilers for a total of 45 days or more in a 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. 122.23

² Plaintiffs intend to show that Perdue Farms, Inc. exerts substantial operational control over the Hudson Farm CAFO and, therefore, is also responsible and liable for the illegal discharges noted herein.

arsenic and ammonia. Upon information and belief, the direct source of these elevated levels of pollutants is the uncovered manure pile located on Defendant's farm.

These sample results reveal ongoing violations of the CWA. Each day of unpermitted discharges comprises a series of separate violations of the CWA, with a separate violation for each pollutant illegally discharged. Responsible parties are subject to civil penalties of up to \$37,500 for each violation. Further, since these discharges may be "negligent" or "knowing" violations, responsible parties may be subject to criminal penalties and enforcement pursuant to 33 U.S.C. § 1319(c).

The Assateague Coastkeeper and Waterkeeper Alliance believe that this notice of intent to sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period to file a citizen suit in federal court against the Defendants, Alan and Kristin Hudson Farm and Perdue Farms, Inc., under Section 505(a) of the CWA for the violations outlined above.

Please do not hesitate to contact the undersigned if you wish to discuss these matters.

Sincerely,



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cc:

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