

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

_____)	
UNITED STATES OF AMERICA)	
and)	
LOUISIANA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
EVANGELINE ENTERPRISES LLC)	
(d/b/a EVANGELINE TRAINING CENTER),)	Judge
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Louisiana Department of Environmental Quality ("LDEQ"), file this Complaint and allege as follows:

NATURE OF THIS ACTION

1. This is a civil environmental enforcement action brought against Evangeline Enterprises LLC d/b/a Evangeline Training Center ("Evangeline") for the ongoing unauthorized

discharges of pollutants from Evangeline's race horse training center, a concentrated animal feeding operation ("CAFO"), to waters of the United States and waters of the State of Louisiana.

2. The United States seeks injunctive relief and civil penalties under Section 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d).

3. LDEQ seeks civil penalties and injunctive relief pursuant to the Louisiana Environmental Quality Act, La. R.S. 30:2001, *et. seq.* and the regulations promulgated thereunder.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, 1355. LDEQ invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1367 because its claims are so related to the claims of the United States that they form part of the same case or controversy. This Court has personal jurisdiction over Evangeline, which does business in the State of Louisiana and in this judicial district.

5. Authority to bring this action is vested in the United States Department of Justice, on behalf of EPA, pursuant to Sections 309 and 506 of the CWA, 33 U.S.C. §§ 1319 and 1366, and under 28 U.S.C. §§ 516 and 519.

6. Venue is proper in the Western District of Louisiana pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. § 1391(b) and (c) and 1395(a), as the alleged violations in this Complaint occurred and are occurring at Evangeline Training Center, which is located in this judicial district.

NOTICE

7. Notice of the commencement of this action was given to LDEQ pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

DEFENDANT

8. Defendant Evangeline is a limited liability company organized and existing under the laws of the State of Louisiana.

9. At all times relevant to this Complaint, Evangeline has owned and operated the Evangeline Training Center at 3620 N.E. Evangeline Thruway, Carencro, Louisiana (the “Facility”), from which Evangeline has discharged pollutants to waters of the United States and the State of Louisiana.

10. Evangeline is a “person” within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Article 24 of the Louisiana Civil Code, La. C.C. Art. 24.

STATUTORY AND REGULATORY BACKGROUND

I. The Clean Water Act

11. The objectives of the CWA are to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. 33 U.S.C. § 1251(a).

12. To accomplish these goals, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” from a point source to waters of the United States except, as applicable here, in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the terms “discharge of a pollutant” and “discharge of pollutants” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source”

14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

15. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” as, *inter alia*, “biological materials . . . and agricultural waste discharged into water.”

16. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “the waters of the United States, including the territorial seas.”

17. In 2008, EPA promulgated revised rules regulating the discharge of pollutants from a CAFO. *See* 73 Fed. Reg. 70418 (Nov. 20, 2008). Under the rules, a CAFO is defined as an animal feeding operation (“AFO”) that can be classified as either “large” or “medium” based on the number horses confined. 40 C.F.R. § 122.23(b)(2).

18. 40 C.F.R. § 122.23(b)(1) defines an AFO as a lot or facility where “(i) Animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.”

19. An AFO is defined as a “Medium CAFO” when it (1) stables or confines between 150 and 499 horses; and (2) discharges pollutants “into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.” 40 C.F.R. § 122.23(b)(6).

20. An AFO is defined as a “Large CAFO” when it stables or confines 500 or more horses. 40 C.F.R. § 122.23(b)(4).

21. Pursuant to 40 C.F.R. § 122.23(a), CAFOs, “are point sources, subject to NPDES permitting requirements.”

22. 40 C.F.R. § 122.23(b)(7) defines “process wastewater” as “water directly or indirectly used in the operation of the AFO” for washing, cleaning or flushing barns and manure pits; washing animals; and any water that comes into contact with “raw materials, products, or byproducts” including manure, feed, or bedding.

23. Pursuant to Section 301(a) of the CWA, 33 U.S.C. § 1311(a), a CAFO must not discharge pollutants unless the discharge is authorized by a NPDES permit. In order to obtain authorization under a NPDES permit, the CAFO owner must either apply for an individual NPDES permit or submit a notice of intent for coverage under a NPDES general permit. 40 C.F.R. § 122.23(d)(1).

24. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes each state to administer its own NPDES permit program under state law if the state program has been approved by the Administrator of EPA. The State of Louisiana has been authorized by EPA to administer its NPDES program since August 1996. LDEQ administers the NPDES program through the Louisiana Pollutant Discharge Elimination System (“LPDES”).

25. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes civil actions for “relief, including a permanent or temporary injunction.”

26. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Bipartisan Budget Act of 2015, Pub. L. No. 114-74, Section 701, and 40 C.F.R. Part 19 (82 Fed. Reg. 3633 (Jan. 12, 2017)),

Evangeline is liable for civil penalties not to exceed \$37,500 per day for each violation that occurred between January 12, 2009 and November 2, 2015, and \$52,414 per day for each violation that occurred on or after November 3, 2015.

II. The Louisiana Environmental Quality Act

27. One of the objectives of the Environmental Quality Act (“EQA”) is to protect and safeguard the waters of the State of Louisiana. La R.S. 30:2003 and La. R.S. 30:2072.

28. La. R.S. 30:2076(A)(1) prohibits the discharge into any waters of the State of: “(a) [a]ny waste or other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or (b) [a]ny substance, the discharge of which violates any term, condition, or limit imposed by a permit.”

29. La. R.S. 30:2076(A)(3) prohibits the violation by any person of “any rule or regulation adopted under this Chapter or the terms of any permit or order issued under authority of this Subtitle.”

30. The Louisiana Administration Code (“LAC”) 33:IX.2501.A requires “[a]ny person who discharges or proposes to discharge pollutants..., and who does not have an effective permit, ...must submit a complete application to the [LDEQ].... All concentrated animal feeding operations have a duty to seek coverage under an [Louisiana Pollutant Discharge Elimination System] permit...”

31. LAC 33:IX.2313.A defines the term “discharge of a pollutant” as “any addition of any pollutant or combination of pollutants to waters of the State [of Louisiana] from any point source”

32. LAC 33:IX.2313.A defines the term “point source” to include any “concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

33. La. R.S. 30:2004(15) and LAC 33:IX.2313.A defines “pollutant” as “biological materials . . . and agricultural waste discharged into water.”

34. La. R.S. 30:2073(7) defines “waters of the state” as “both the surface and underground waters within the state of Louisiana including all rivers, streams, lakes, groundwaters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico [F]or purposes of the Louisiana Pollutant Discharge Elimination System, this includes all surface waters which are subject to the ebb and flow of the tide, lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, impoundments of waters within the state of Louisiana otherwise defined as ‘waters of the United States’ in 40 C.F.R. § 122.2, and tributaries of all such waters.”

35. LAC 33:IX.2505.B defines an “AFO” as a lot or facility where “(a) animals . . . have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (b) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.”

36. An AFO will be classified as a “Medium CAFO” if it (1) stables or confines between 150 and 499 horses; and (2) discharges pollutants “into waters of the state through a manmade ditch, flushing system, or other similar manmade device.” LAC 33:IX.2505.B.

37. An AFO will be classified as a “Large CAFO” if it stables or confines 500 or more horses. LAC 33:IX.2505.B.

38. Pursuant to LAC 33:IX.2505.A, CAFOs “are point sources, subject to LPDES permitting requirements.”

39. A CAFO must not discharge pollutants unless the discharge is authorized by an LPDES permit. In order to obtain authorization under an LPDES permit, “the CAFO owner or operator shall either apply for an individual LPDES permit or submit a notice of intent for coverage under an LPDES general permit.” LAC 33:IX.2505.D.1.

40. La. R.S. 30:2025 authorizes civil actions necessary to carry out the provisions of the Environmental Quality Act, including temporary or permanent injunctions.

41. LDEQ is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *Jurisich v. Jenkins*, 749 So. 2d 597 (La. 1999).

42. Pursuant to La. R.S. 30:2025, Evangeline is liable for a civil penalty of not more than the cost to the state of any response action made necessary by these violations which is not voluntarily paid by Evangeline, and a penalty of not more than \$32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, Evangeline may be liable for an additional penalty of not more than \$1,000,000.

GENERAL ALLEGATIONS

43. At all times relevant to this Complaint, Evangeline has owned and operated the Facility.

44. The Facility is located at 3620 N.E. Evangeline Thruway, Carencro, Lafayette Parish, Louisiana.

45. The Facility is a training center for race horses and is centrally located among the Louisiana horse racetracks. The Facility includes a practice track, barns and horse stalls, manure storage areas, wash racks, and horse walkers (collectively, the "Production Area").

46. The Facility stabled or confined at least 150 horses since at least January 2013.

47. Crops, vegetation, forage growth, and post-harvest residues are not sustained over any portion of the Facility.

48. At all times relevant to this Complaint, the Facility was at least a medium CAFO as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), 40 C.F.R. § 122.23(b)(6), and LAC 33:IX.2505.B.

49. In addition, at times relevant to this Complaint, the Facility operated as a Large CAFO, stabling or confining over 500 horses for at least 45 days during a 12 month period.

50. Process wastewater at the Facility is a mix of horse wash rack water and contaminated storm water from the Production Area.

51. Contaminated storm water, which is a type of process wastewater, consists of runoff from manure and waste bedding concrete storage bins exposed to the elements, exposed raw material storage areas, horse walkers, and horse walk way areas.

52. Process wastewater from the Production Area drains into a system of man-made, concrete-lined and earthen drainage ditches, and pipes within the Facility. Non-contact storm water, such as runoff from barn roofs, commingles with the process wastewater in the man-made drainage system. The untreated process wastewater flows through the man-made drainage system and exits the Facility at three outfalls: the West Outfall, Southeast Outfall, and Northeast Outfall.

53. The manure, urine, horse wash water, and other biological materials that comprise the process wastewater are pollutants within the meaning of Section 502(a)(6) of the CWA, 33 U.S.C. § 1362(6), La. R.S. 30:2004(15), and LAC 33:IX.2313.A.

54. The Facility is located approximately 0.44 miles away from a stream called the Francois Coulee, a tributary of the Vermilion River. The Francois Coulee originates near the Facility and flows approximately six miles in a generally southern direction before joining the Vermilion River.

55. The Francois Coulee has an ordinary high water mark, defined bed and banks, and has been identified as having an intermittent flow in its upper reaches and perennial flow in its lower reaches.

56. The Francois Coulee is a navigable water within the meaning of the CWA and a water of the State of Louisiana within the meaning of the EQA.

57. Process wastewater discharged from the Facility through the West Outfall flows west and south for 0.44 miles in an earthen ditch running parallel to a frontage road. The process wastewater then enters the Francois Coulee.

58. Process wastewater discharged from the Facility through the Southeast Outfall enters an unnamed tributary of the Francois Coulee ("Unnamed Tributary South"). After entering Unnamed Tributary South, wastewater flows approximately three miles south to the Francois Coulee.

59. Unnamed Tributary South has been identified as having an intermittent flow in its upper reaches and perennial flow in its lower reaches, and has an ordinary high water mark and a defined bed and banks.

60. Unnamed Tributary South is a navigable water within the meaning of the CWA and a water of the State of Louisiana within the meaning of the EQA.

61. Process wastewater discharged from the Facility through the Northeast Outfall enters a small creek and flows 1.9 miles before entering a larger tributary of the Vermilion River (“Unnamed Tributary East”). Unnamed Tributary East flows for approximately two miles and joins the Vermilion River.

62. Unnamed Tributary East has been identified as a perennial stream and has an ordinary high water mark, a defined bed and banks, and aquatic plants evidencing the regular presence of water.

63. Unnamed Tributary East is a navigable water within the meaning of the CWA and a water of the State of Louisiana within the meaning of the EQA.

64. The Facility does not have a retention structure designed to hold process wastewater.

65. EPA has inspected the Facility on five occasions between June 2013 and July 2016. During each of the inspections, EPA observed ongoing discharges of process wastewater from one or more of the Facility’s outfalls into surrounding waterways.

66. The Facility estimates that approximately 10,500 gallons of process wastewater is generated each day from washing horses.

67. The Facility is built on a hill. Process wastewater on the Facility flows down slope. Process wastewater generated on the north side of the Facility flows to the Northeast Outfall, process wastewater generated on the south side of the Facility flows to the Southeast Outfall, while process wastewater generated on the west side of the Facility flows west and exits

the Facility through the West Outfall. Through these outfalls, Evangeline discharges process wastewater to the Francois Coulee, Unnamed Tributary South, and Unnamed Tributary East.

68. During several inspections EPA collected samples of process wastewater discharged from the Facility. EPA's analysis indicates that all samples contained pollutants, including phosphorus, ammonia, and nitrate/nitrite. Results also indicate significant amounts of fecal coliform in the process wastewater discharges from the Facility. For example, results from samples taken by EPA during the June 2013 inspection indicate that process wastewater being discharged from the Northeast Outfall contained 8,100 colony forming units ("cfu") of fecal coliform per 100 ml of wastewater. Sampling conducted during the January 2015 inspection indicated that the process wastewater being discharged from the West Outfall contained 16,000 cfu of fecal coliform per 100 ml, discharge from the Southeast Outfall contained 10,000 cfu of fecal coliform per 100 ml, and discharge from the Northeast Outfall contained 3,600 cfu of fecal coliform per 100 ml.

69. LDEQ's standard for primary contact recreational use waterbodies is 400 cfu of fecal coliform per 100 ml of water, therefore LDEQ has incorporated a limit of 400 cfu of fecal coliform per 100 ml into all LDPES permits.

70. The State of Louisiana has identified the Vermilion River as impaired for fecal coliform, nitrate/nitrate, and dissolved oxygen.

71. Evangeline does not have an LPDES permit for the Facility, and is therefore not authorized to discharge under the NPDES program.

CLAIMS FOR RELIEF

United States Claim for Injunctive Relief and Civil Penalties

33 U.S.C. § 1319(b) and (d)

72. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

73. Subject to a reasonable opportunity for further investigation or discovery, Evangeline discharges process wastewater from one or more of the Facility's outfalls into navigable waters each day horses are washed, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

74. Subject to a reasonable opportunity for further investigation or discovery, horses at the Facility are washed daily.

75. In addition, subject to a reasonable opportunity for further investigation or discovery, Evangeline, during rainfall events resulting in at least one inch of rain ("Significant Rainfall Event"), discharges process wastewater through its outfalls to the Francois Coulee, Unnamed Tributary South, and Unnamed Tributary East.

76. From January 1, 2013, through December 31, 2016, there were 70 Significant Rainfall Events at the Facility.

77. Each discharge of process wastewater described herein is a "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

78. Each day of each unauthorized discharge of a pollutant is a separate violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

79. On July 29, 2013, EPA sent Evangeline a Cease and Desist Administrative Order pursuant to EPA's authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3),

ordering Evangeline to cease ongoing unauthorized discharges at the Facility upon receipt of the Administrative Order.

80. Subject to a reasonable opportunity for further investigation or discovery, the Facility continues to discharge pollutants to navigable waters without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and will continue that practice unless enjoined by the Court.

81. Pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. Part 19 (82 Fed. Reg. 3633, (Jan. 12, 2017)), Evangeline is liable for civil penalties to the United States in an amount not to exceed \$37,500 per day for each violation that occurred between January 12, 2009 and November 2, 2015, and \$52,414 per day for each violation that occurred on or after November 3, 2015.

82. Because Evangeline unlawfully discharged and continues to discharge pollutants to waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), Evangeline is liable for injunctive relief to the United States pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

LDEQ Claim for Civil Penalties and Injunctive Relief

La. R.S. 30:2001, *et. seq.*

83. Paragraphs 1 through 82 are realleged and incorporated herein by reference.

84. Subject to a reasonable opportunity for further investigation or discovery, Evangeline discharges process wastewater from one or more of the Facility's outfalls into surrounding waterways each day horses are washed, in violation of La. R.S. 30:2076(A)(1).

85. Each discharge of process wastewater described herein is a "discharge of pollutants" within the meaning of LAC 33:IX.2313.A.

86. Each day of each unauthorized discharge of a pollutant is a separate violation of La. R.S. 30:2025(E)(1)(a), and LAC 33:I.703.A.

87. Subject to a reasonable opportunity for further investigation or discovery, the Facility continues to discharge pollutants to waters of the State of Louisiana without a permit in violation of LAC 33:IX.2501.A and will continue that practice unless enjoined by the Court.

88. Pursuant to La. R.S. 30:2025(E)(1)(a), Evangeline is liable for civil penalties to LDEQ of not more than \$32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, Evangeline may be liable for an additional penalty of not more than \$1,000,000.

89. Because Evangeline unlawfully discharged and continues to discharge pollutants to waters of the State of Louisiana in violation of the EQA, La. R.S. 30:2001 *et seq.*, Evangeline is liable for injunctive relief to LDEQ pursuant to La. R.S. 30:2025.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

1. Enter judgment that Evangeline is liable to the United States for civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and assess civil penalties of up to \$37,500 per day of violation through November 2, 2015 and up to \$52,414 per day of violation that occurred on or after November 3, 2015;

2. Enter judgment that Evangeline is liable to LDEQ for civil penalties of not more than \$32,500 for each day of violation, and if it is established that any violation was done intentionally, willfully, or knowingly, or resulted in a discharge or disposal which caused

irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health, an additional penalty of not more than \$1,000,000, pursuant to La. R.S. 30:2025(E)(1)(a).

3. Enter judgment that Evangeline is liable to the United States for all appropriate injunctive relief, including immediate submission of a LPDES permit application, pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b);

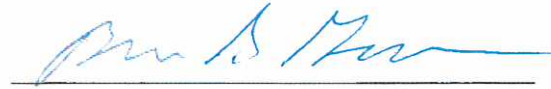
4. Enter judgment that Evangeline is liable to LDEQ for all appropriate injunctive relief, pursuant to La. R.S. 30:2025.

5. Award the United States and LDEQ its costs in this action; and

6. Grant the United States and LDEQ such other relief as the Court deems appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:



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