

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2007-0527-AGR-E **TCEQ ID:** RN102093929 **CASE NO.:** 33122

**RESPONDENT NAME:** Gerben Leyendekker dba Leyendekker Dairy Farm

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Leyendekker Dairy Farm, County Road 261 approximately 3 miles northwest of Carlton and 1 mile north of Farm-to-Market Road 219, Erath County</p> <p><b>TYPE OF OPERATION:</b> Dairy</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 3, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468  <b>Respondent:</b> Mr. Gerben Leyendekker, Owner, Leyendekker Dairy Farm, 2335 County Road 261, Dublin, Texas 76446  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 7, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 16, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine records review. Two violations were documented.</p> <p><b>WATER</b></p> <p>1) Failure to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ [30 TEX. ADMIN. CODE § 321.42(s)].</p> <p>2) Failure to pay late fees for Financial Account No 0601378 [TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$2,060</p> <p><b>Total Deferred:</b> \$412  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,648</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest with the notation, "Gerben Leyendekker dba Leyendekker Dairy Farm, Financial Administration Account No. 0601378";</p> <p>b. Within 30 days after the effective date of this Agreed Order, provide complete and accurate information regarding the CNMP as requested by TSSWCB;</p> <p>c. Respond completely and adequately, as determined by the TSSWCB, to all requests for information concerning the CNMP within 30 days after the date of such requests or by any other deadline specified in writing;</p> <p>d. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision b. to the addresses in Ordering Provision e. in the Agreed Order; and</p> <p>e. Within 120 days after the effective date of this Agreed Order, submit certification of compliance that the Facility has developed and is operating under a CNMP certified by the TSSWCB to the address referenced in Ordering Provision b. in the Agreed Order.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

<b>DATES</b>	Assigned	19-Mar-2007	Screening	3-Apr-2007	EPA Due	
	PCW	4-Apr-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Gerben Leyendekker dba Leyendekker Dairy Farm		
Reg. Ent. Ref. No.	RN102093929		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33122	No. of Violations	2	
Docket No.	2007-0527-AGR-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Samuel Short	
Multi-Media		EC's Team	Enforcement Team 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,000</b>
---	-------------------	----------------

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	3% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$60</b>
---------------------------	----------------	--------------------------------	-------------

Notes: A 3% enhancement is recommended for having two NOV's for non-similar violations and one Notice of Intent within the last five years.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	----------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<b>\$0</b>
------------------------------------	--------------	-------------------	------------

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

<b>Total EB Amounts</b>	<b>\$700</b>	<b>0% Enhancement*</b>	<b>Subtotal 6</b>	<b>\$0</b>
<b>Approx. Cost of Compliance</b>	<b>\$10,000</b>	<i>*Capped at the Total EB \$ Amount</i>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$2,060</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	<b>\$0</b>
---	--	-------------------	------------

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

<b>Final Penalty Amount</b>	<b>\$2,060</b>
-----------------------------	----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$2,060</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	20% Reduction	<b>Adjustment</b>	<b>-\$412</b>
-----------------	---------------	-------------------	---------------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$1,648</b>
------------------------	----------------

Screening Date 3-Apr-2007

Docket No. 2007-0527-AGR-E

PCW

Respondent Gerben Leyendekker dba Leyendekker Dairy Farm

Policy Revision 2 (September 2002)

Case ID No. 33122

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102093929

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 3%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

A 3% enhancement is recommended for having two NOVs for non-similar violations and one Notice of Intent within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 3%

Screening Date 3-Apr-2007

Docket No. 2007-0527-AGR-E

PCW

Respondent Gerben Leyendekker dba Leyendekker Dairy Farm

Policy Revision 2 (September 2002)

Case ID No. 33122

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102093929

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.42(s)

Violation Description Failed to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 57

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$2,000

Two monthly events are recommended based on the date the requested information was required to be submitted to the TSSWCB (February 5, 2007) through the date of screening (April 3, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$700

Violation Final Penalty Total \$2,060

This violation Final Assessed Penalty (adjusted for limits) \$2,060

## Economic Benefit Worksheet

**Respondent** Gerben Leyendekker dba Leyendekker Dairy Farm  
**Case ID No.** 33122  
**Reg. Ent. Reference No.** RN102093929  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	31-Dec-2006	31-Dec-2007	1.0	\$33	\$667	\$700
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

#### Notes for DELAYED costs

Estimated cost to develop and implement a Comprehensive Nutrient Management Plan. Date required is the date the plan was required to be certified and implemented. Final date is the expected date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

#### Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$700

Screening Date 3-Apr-2007

Docket No. 2007-0527-AGR-E

PCW

Respondent Gerben Leyendekker dba Leyendekker Dairy Farm

Policy Revision 2 (September 2002)

Case ID No. 33122

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN102093929

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s) Tex. Water Code § 5.702

Violation Description Failed to pay late fees for Financial Account No 0601378.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$0

No penalty is recommended because penalty and interest will be assessed at the next billing.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

## Economic Benefit Worksheet

**Respondent** Gerben Leyendekker dba Leyendekker Dairy Farm  
**Case ID No.** 33122  
**Reg. Ent. Reference No.** RN102093929  
**Media** Water Quality  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN602564486 LEYENDEKKER, GERBEN	Classification: AVERAGE	Rating: 0.80
Regulated Entity:	RN102093929 LEYENDEKKER DAIRY FARM	Classification: AVERAGE	Site Rating: 0.80
ID Number(s):	WASTEWATER AGRICULTURE PERMIT		WQ0003259000
	WASTEWATER AGRICULTURE PERMIT		TX0129291
Location:	On County Road 261 approximately 3 miles northwest of Carlton and 1 mile North of Farm-to-Market Road 219	Rating Date: September 01 06	Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: March 21, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 21, 2002 to March 21, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Samuel Short Phone: (512) 239-5363

## Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | N/A        |
| 5. When did the change(s) in ownership occur?  | N/A        |

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- |   |            |          |
|---|------------|----------|
| 1 | 06/18/2003 | (21009)  |
| 2 | 02/03/2004 | (257280) |
| 3 | 08/19/2005 | (405002) |
| 4 | 02/03/2006 | (451924) |
| 5 | 11/21/2006 | (516327) |
| 6 | 01/03/2007 | (533592) |
| 7 | 03/15/2007 | (543186) |

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/19/2005 (405002)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)

Description: Failure to include all required information regarding waste / wastewater application in the records.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(12)

Description: Failure to install and maintain a marker in the retention control structure (RCS) to indicate the 25-year, 24-hour storm water storage capacity of RCS.

Date: 01/27/2006 (451924)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.40(11)

Description: Failure to properly dispose dead animals within 3 days.

F. Environmental audits.

Notice of Intent Date: 10/06/2003 (262817)

No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
GERBEN LEYENDEKKER DBA  
LEYENDEKKER DAIRY FARM  
RN102093929**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0527-AGR-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gerben Leyendekker dba Leyendekker Dairy Farm ("Mr. Leyendekker") under the authority of TEX. WATER CODE chs. 5, 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Leyendekker appear before the Commission and together stipulate that:

1. Mr. Leyendekker owns and operates a dairy on County Road 261 approximately three miles northwest of Carlton and one mile north of Farm-to-Market Road 219 in Erath County, Texas (the "Facility").
2. Mr. Leyendekker has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and Mr. Leyendekker agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Leyendekker is subject to the Commission's jurisdiction.
4. Mr. Leyendekker received notice of the violations alleged in Section II ("Allegations") on or about March 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Leyendekker of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Two Thousand Sixty Dollars (\$2,060) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Leyendekker has paid One Thousand Six Hundred Forty-Eight Dollars (\$1,648) of the administrative penalty and Four Hundred Twelve Dollars (\$412) is deferred contingent upon Mr. Leyendekker's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Leyendekker fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Leyendekker to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Leyendekker have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Leyendekker has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, Mr. Leyendekker is alleged to have:

1. Failed to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"), in violation of 30 TEX. ADMIN. CODE § 321.42(s), as documented during a record review conducted on March 7, 2007. Specifically, a CNMP was submitted to the TSSWCB for review, but Mr. Leyendekker failed to respond to requests for additional information from the TSSWCB and the TCEQ; and
2. Failed to pay late fees for Financial Account No 0601378, in violation of TEX. WATER CODE § 5.702, as documented during a record review conducted on April 3, 2007.

## **III. DENIALS**

Mr. Leyendekker generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Leyendekker pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Leyendekker's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Gerben Leyendekker dba Leyendekker Dairy Farm, Docket No. 2007-0527-AGR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Mr. Leyendekker shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest with the notation, "Gerben Leyendekker dba Leyendekker Dairy Farm, Financial Administration Account No. 0601378", to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

- b. Within 30 days after the effective date of this Agreed Order, provide complete and accurate information regarding the CNMP as requested by TSSWCB to:

Texas State Soil and Water Conservation Board  
Attention: Mr. Joe Ballard  
611 East Blackjack Street  
Dublin, Texas 76446

- c. Respond completely and adequately, as determined by the TSSWCB, to all requests for information concerning the CNMP within 30 days after the date of such requests or by any other deadline specified in writing;
- d. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision 2.b. to the addresses shown below in Ordering Provision No. 2.e.; and
- e. Within 120 days after the effective date of this Agreed Order, submit certification of compliance that the Facility has developed and is operating under a CNMP certified by the TSSWCB to the address referenced in Ordering Provision No. 2.b. The certification



The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall also be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2301 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Leyendekker. Mr. Leyendekker is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Leyendekker fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Leyendekker's failure to comply is not a violation of this Agreed Order. Mr. Leyendekker shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Leyendekker shall notify the Executive Director within seven days after Mr. Leyendekker becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Leyendekker shall be made in writing to the Executive Director. Extensions are not effective until Mr. Leyendekker receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.



6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Leyendekker in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Leyendekker, or three days after the date on which the Commission mails notice of the Order to Mr. Leyendekker, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

8/27/07  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions; if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

June 15 "07  
\_\_\_\_\_  
Date

Gerben Leyendekker  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Gerben Leyendekker dba Leyendekker Dairy Farm

Owner  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

