

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2005-1357-AGR-E TCEQ ID: RN104316377 CASE NO.: 26318
RESPONDENT NAME: BRAD ALLEN DBA A+ ANGUS RANCH

ORDER TYPE:		
<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	
CASE TYPE:		
<input checked="" type="checkbox"/> AGRICULTURE	<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 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>SITE WHERE VIOLATION(S) OCCURRED: 6207 West Farm-to-Market 8, Stephenville, Erath County</p> <p>TYPE OF OPERATION: Animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: Two complaints have been received but the complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 25, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Michael Meyer, Enforcement Division, MC 128, (512) 239-4492 TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901 Respondent: Mr. Brad Allen, Owner, A+ Angus Ranch, P.O. Box 203, Stephenville, Texas 76401 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: November 18, 2004; November 22, 2004</p> <p>Dates of Investigation Relating to this Case: November 18, 2004</p> <p>Dates of NOV/NOEs Relating to this Case: July 1, 2005 (NOE)</p> <p>Background Facts:</p> <p>The EDRP was filed on April 20, 2006. Settlement was achieved on March 21, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AGR:</p> <p>1. Failed to prevent the discharge of waste from an animal feeding operation into or adjacent to waters in the state [30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(c)].</p>	<p>Total Assessed: \$1,050</p> <p>Total Deferred: \$0</p> <p>Total Paid to General Revenue: \$1,050</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirement:</p> <p>In the event that the Respondent resumes operation of an animal feeding operation as defined in 30 TEX. ADMIN. CODE § 321.32, the Respondent shall develop and implement a certified water quality management plan in compliance with 30 TEX. ADMIN. CODE § 321.47.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned: 11-Jul-2005	Screening: 03-Aug-2005	EPA Due:
	PCW: 16-Feb-2006		

RESPONDENT/FACILITY INFORMATION			
Respondent	Brad Allen dba A+ Angus Ranch		
Reg. Ent. Ref. No.	RN104316377		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26318	No. of Violations	1
Docket No.	2005-1357-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Michael Meyer
Multi-Media		EC's Team	Enforcement Team 8
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotal 2, 3, & 7	\$50
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Notes: The respondent had one prior NOV for similar violations.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The respondent is not yet in compliance.

Economic Benefit	0% Enhancement	Subtotal 6	\$0
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Total EB Amounts	\$1,110	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount **\$1,050**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited cases.

PAYABLE PENALTY	\$1,050
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Screening Date	03-Aug-2005	Docket No.	2005-1357-AGR-E	PCW
Respondent	Brad Allen dba A+ Angus Ranch			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	26318			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN104316377			
Media [Statute]	Water Quality			
Enf. Coordinator	Michael Meyer			

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)	1	5%
	Other written NOVs	0	0%
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 disclosed)	0	0%
	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%
Other	<i>Please Enter Yes or No</i>		
	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) 5%

>> 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 The respondent had one prior NOV for similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date	03-Aug-2005	Docket No.	2005-1357-AGR-E	PCW
Respondent	Brad Allen dba A+ Angus Ranch		Policy Revision 2 (September 2002)	
Case ID No.	26318		PCW Revision May 19, 2005	
Reg. Ent. Reference No.	RN104316377			
Media [Statute]	Water Quality			
Enf. Coordinator	Michael Meyer			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 321.31(a)			
Secondary Rule Cite(s)	Tex. Water Code § 26.121(c)			
Violation Description	Failed to prevent the discharge of waste from an animal feeding operation into or adjacent to waters in the state. Specifically, During a rain event from November 18, 2004 to November 22, 2004 wastewater runoff originating at the barn and working pens, flowed down a stomped out fence row and then off of the respondent's property into a roadside ditch.			
Base Penalty	\$10,000			

Environmental Property and Human Health Matrix				
	Harm			
	Major	Moderate	Minor	
Release			X	
Actual			X	
Potential				
				Percent 10%
Programmatic Matrix				
	Major	Moderate	Minor	
Falsification				
				Percent
Matrix Notes	The amount of pollutants discharged were insignificant and did not exceed the levels that are protective of human health or the environment.			
	Adjustment			-\$9,000
	Base Penalty Subtotal			\$1,000

Violation Events				
Number of Violation Events	1			
	daily			
	monthly			
<i>mark only one</i>	quarterly			
<i>use a small x</i>	semiannual			
	annual			
	single event	X		
	One single event is recommended based upon the investigation conducted on November 18, 2004.			
	Violation Base Penalty			\$1,000

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$1,110	Violation Final Penalty Total \$1,050
This violation Final Assessed Penalty (adjusted for limits) \$1,050	

Economic Benefit Worksheet

Respondent: Brad Allen dba A+ Angus Ranch
 Case ID No: 26318
 Reg. Ent. Reference No: RN104316377
 Media [Statute]: Water Quality
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$10,000	18-Nov-2004	31-May-2006	1.5	\$51	\$1,021	\$1,072
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	\$500	18-Nov-2004	31-May-2006	1.5	\$38	n/a	\$38
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to obtain a certified water quality management plan and to construct recommended retention control structures, calculated from the inspection date (11/18/2004) to the estimated date of compliance (05/31/2006).

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: \$10,500 TOTAL: \$1,110

Compliance History

Customer/Respondent/Owner-Operator: CN602654121 ALLEN, BRAD Classification: AVERAGE Rating: 6.000
Regulated Entity: RN104316377 A+ ANGUS RANCH Classification: AVERAGE Site Rating: 6.00
ID Number(s):
Location: 6207 W FM 8, Erath County Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 30, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 19, 2000 to July 19, 2005
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Cari Bing Phone: (512) 239-1445

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? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments:

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 11/02/2004 (339608)

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

Date: 06/25/2004 (277900)

Self Report? NO

Classification: Moderate

Citation:

30 TAC Chapter 321, SubChapter B 321.33(e)

Description: Failure to locate, construct, and manage waste control facilities and land application areas to protect surface and groundwaters.

Self Report? NO

Classification: Moderate

Citation:

30 TAC Chapter 321, SubChapter B 321.39(f)(24)(B)

Description: Failure to contain runoff from manure piles.

F. Environmental audits.

N/A

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
BRAD ALLEN
DBA A+ ANGUS RANCH
RN104316377

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-1357-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Brad Allen dba A+ Angus Ranch ("Mr. Allen") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Allen appear before the Commission and together stipulate that:

1. Mr. Allen owns and operates an animal feeding operation located at 6207 West Farm-to-Market 8, Stephenville, Erath County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Allen agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Allen is subject to the Commission's jurisdiction.
4. Mr. Allen received notice of the violations alleged in Section II ("Allegations") on or about July 6, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Allen of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Allen has paid one thousand fifty dollars (\$1,050.00) of the administrative 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. Allen 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. Allen 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

Mr. Allen is alleged to have failed to prevent the discharge of waste from an animal feeding operation into or adjacent to waters in the state, in violation of 30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(c).

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Allen pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Mr. Allen'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on

Environmental Quality” and shall be sent with the notation “Re: Brad Allen dba A+ Angus Ranch, Docket No. 2005-1357-AGR” 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. In the event that Mr. Allen resumes operation of an AFO as defined in 30 TEX. ADMIN. CODE § 321.32, Mr. Allen shall develop and implement a certified water quality management plan in compliance with 30 TEX. ADMIN. CODE § 321.47.
3. Upon compliance with all of the Ordering Provisions in this Agreed Order, Mr. Allen shall be eligible to apply for participation in the TCEQ Compliance Commitment (C2) Partnership through the Small Business and Local Government Assistance program.
4. The provisions of this Agreed Order shall apply to and be binding upon Mr. Allen. Mr. Allen 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.
5. If Mr. Allen 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. Allen’s failure to comply is not a violation of this Agreed Order. Mr. Allen shall have the burden of establishing to the Executive Director’s satisfaction that such an event has occurred. Mr. Allen shall notify the Executive Director within seven days after Mr. Allen becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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. Allen shall be made in writing to the Executive Director. Extensions are not effective until Mr. Allen receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Allen 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.

8. 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Allen, or three days after the date on which the Commission mails notice of the Order to Mr. Allen, 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

John Ferguson Perdue

For the Executive Director

9/17/07
~~6/29/07~~
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

Brad Allen
Signature

June 22, 2007
Date

Brad Allen
Name (Printed or typed)

President
Title