

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2006-1541-AGR-E    **TCEQ ID:** RN101536886    **CASE NO.:** 31180  
**RESPONDENT NAME:** R. J. Smelley Company, Inc.

**ORDER TYPE:**

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

**CASE TYPE:**

<input checked="" type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

**SITE WHERE VIOLATION(S) OCCURRED:** R J Smelley Dairy, located on the west side of Cattlebaron Drive, approximately two miles south of Farm-to-Market Road 1886, Parker and Tarrant Counties

**TYPE OF OPERATION:** Dairy

**SMALL BUSINESS:**     Yes     No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on March 19, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

- TCEQ Attorney/SEP Coordinator:** None
- TCEQ Enforcement Coordinator:** Ms. Lynley Doyen, Enforcement Division, Enforcement Section I, MC 169, (512) 239-1364; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
- TCEQ Field Investigator:** Ms. J. Clair Baker, DFW Regional Office, MC R-04, (254) 965-9203
- Respondent:** Mr. David Smelley, President, R. J. Smelley Company, Inc., 4750 Cattlebaron Drive, Fort Worth, Texas 76108  
                  Mr. Joe Cordell, Lowther Consulting, Inc., P.O. Box 78, Dublin, Texas 76446
- Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 2, 2006</p> <p><b>Date of NOE Relating to this Case:</b> August 25, 2006 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. Seven violations were documented.</p> <p><b>WATER</b></p> <p>1) Failed to store stockpiled manure in a contained area where contaminated runoff would be collected in a control structure. Specifically, the investigator observed a manure stockpile located on the southwest side of the Facility, northwest of the heifer/calf area, in a location where contaminated runoff would not be directed to a control structure [30 TEX. ADMIN. CODE § 321.39(f)(24)(B) and Texas Pollutant Discharge Elimination System ("TPDES") Registration No. WQ0002422000, Section V. Conditions of the Registration].</p> <p>2) Failed to design, construct, and operate waste control facilities to retain all process generated wastewater and the contaminated rainfall runoff during a 25-year, 24-hour rainfall event from open lots and associated areas where concentration of animals prevents maintenance of forage crops during the regular growing season. Specifically, the investigator observed animal feeding areas and open lots with significant manure accumulations located northwest of land management unit ("LMU") No. 1 and southeast of the hill near a gas well. The open lots and associated areas were not maintained or managed to retain or divert process generated wastewater or contaminated runoff to a control structure [30 TEX. ADMIN. CODE § 321.40(1) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p>	<p><b>Total Assessed:</b> \$7,990</p> <p><b>Total Deferred:</b> \$1,598  <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 (Due) to General Revenue:</b> \$297 (remaining \$6,095 due in 23 monthly payments of \$265 each)</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input type="checkbox"/> Avg. <input checked="" type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <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>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that on or around November 28, 2006, R.J. Smelley Company has implemented the following corrective measures at the Facility:</p> <p>a. Properly buried the three animal carcasses located in the burial pit and developed written protocols to ensure the proper collection and disposal of animal carcasses in the future;</p> <p>b. Reconstructed the northwest pen berm located beside an internal road to the west side of RCS No. 1 so that it will properly divert contaminated runoff along the waterway and into the RCS; and</p> <p>c. Removed and properly disposed of the trees that were growing in the embankment of RCS No. 1 and inside RCS P-2.</p> <p><b>Ordering Provision:</b></p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Ensure application rates are documented to reflect the actual number of acres utilized for all LMUs during each application event; and</p> <p>ii. Ensure that predicted yield goals based on the major soil types within identified land application areas are included in the pollution prevention plan.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii.</p>

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>3) Failed to properly manage and dispose of dead animals within three days in a manner to prevent contamination of waters in the state or creation of a nuisance or public health hazard. Specifically, the investigator observed three exposed animal carcasses located in the burial pit [30 TEX. ADMIN. CODE § 321.40(11) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p> <p>4) Failed to prevent the growth of trees in the embankment of retention control structure ("RCS") No. 1 and inside RCS P-2 [30 TEX. ADMIN. CODE § 321.39(f)(18) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p> <p>5) Failed to maintain facilities including ponds, pipes, ditches, pumps, and diversion and irrigation equipment. Specifically, the investigator observed that the northwest pen berm, beside an internal road to the west side of RCS No.1, had not been maintained to properly divert contaminated runoff along the waterway and into the RCS. Additionally, the investigator observed that solids accumulation in RCS P-2 has severely reduced the storage capacity of the structure and the solids have reached the level to potentially stop up the overflow pipe into RCS P-3 [30 TEX. ADMIN. CODE § 321.39(f)(19)(F) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p> <p>6) Failed to document the accurate number of acres utilized during each application event. Specifically, the investigator documented that application rates were based on the "acres in field" and did not account for structures, composting, and pens located in those areas [30 TEX. ADMIN. CODE § 321.39(f)(19)(J)(i) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p> <p>7) Failed to include predicted yield goals based on the major soil types within the identified land application areas in the pollution prevention plan [30 TEX. ADMIN. CODE § 321.39(f)(19)(J)(iv) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration].</p>		<p>c. Within 60 days after the effective date of this Agreed Order:</p> <ul style="list-style-type: none"> <li>i. Ensure that the manure stockpile located on the northwest side of the heifer/calf area and the animal feeding areas and open lots located northwest of LMU No. 1 and southeast of the hill near a gas well are managed to contain the process generated wastewater and all contaminated rainfall runoff; and</li> <li>ii. Remove solids from RCS P-2.</li> </ul> <p>d. Within 75 days after the effective date of this Agreed Order, re-certify the liner where trees have been removed from RCS P-2; and</p> <p>e. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 2.c. through 2.d. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>



# Penalty Calculation Worksheet (PCW)

**DATES** Assigned  PCW  Screening  EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent   
 Reg. Ent. Ref. No.   
 Facility/Site Region  Major/Minor Source

**CASE INFORMATION**

Enf./Case ID No.  No. of Violations   
 Docket No.  Order Type   
 Media Program(s)  Enf. Coordinator   
 Multi-Media  EC's Team   
 Admin. Penalty \$ Limit Minimum  Maximum

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

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

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

**Compliance History** 70% Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**  0% Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply** 0% Reduction Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<i>(mark with a small x)</i>

Notes

**Economic Benefit** 0% Enhancement\* Subtotal 6

Total EB Amounts	<input type="text" value="\$221"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$5,900"/>	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE** Adjustment

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

Notes

Final Penalty Amount

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL** 20% Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

**Screening Date** 08-Sep-2006 **Docket No.** 2006-1541-AGR-E **PCW**  
**Respondent** R. J. Smelley Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 31180 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101536886  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Carolyn V. Lind

**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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	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	1	25%
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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
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)** 70%

>> **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 received an enhancement due to one NOV for same or similar type violations, two Agreed Orders with denial language, and one Agreed Order without denial language.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 70%

**Screening Date** 08-Sep-2006

**Docket No.** 2006-1541-AGR-E

**PCW**

**Respondent** R. J. Smelley Company, Inc.

*Policy Revision 2 (September 2002)*

**Case ID No.** 31180

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN101536886

**Media [Statute]** Water Quality

**Enf. Coordinator** Carolyn V. Lind

**Violation Number**

**Primary Rule Cite(s)**   
**Secondary Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
Matrix Notes	<input type="text" value="Runoff from an uncontained manure stockpile will or could expose human health or the environment to significant amounts of pollutants which would not exceed protective levels."/>					

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 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
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)	\$500	02-Aug-2006	06-May-2007	0.8	\$19	n/a	\$19

Notes for DELAYED costs: The approximate cost to ensure all manure stockpiles are appropriately contained to prevent runoff from the date required through the date of expected compliance (May 6, 2007).

Item	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  TOTAL

**Screening Date** 08-Sep-2006 **Docket No.** 2006-1541-AGR-E **PCW**  
**Respondent** R. J. Smelley Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 31180 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101536886  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Carolyn V. Lind  
**Violation Number**

**Primary Rule Cite(s)**  
**Secondary Rule Cite(s)**  
**Violation Description**

30 Tex. Admin. Code § 321.40(1) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration

Failure to design, construct, and operate waste control facilities to retain all process generated wastewater and the contaminated rainfall runoff during a 25-year, 24-hour rainfall event from open lots and associated areas where concentration of animals prevents maintenance of forage crops during the regular growing season, as documented during the investigation conducted on August 2, 2006. Specifically, the investigator observed animal feeding areas and open lots with significant manure accumulations located northwest of land management unit ("LMU") No. 1 and southeast of the hill near a gas well. The open lots and associated areas were not maintained or managed to retain or divert process generated wastewater or contaminated runoff to a control structure.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Potential	<input type="text"/>	X	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>

**Matrix Notes**

Failure to control contaminated run-off will or could expose human health or the environment to significant amounts of pollutants which would not exceed protective levels.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	X
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>

*single event*

**Violation Base Penalty**

One quarterly event is recommended from the investigation date (August 2, 2006) through the date of screening (September 8, 2006).

**Economic Benefit (EB) for this violation**

**Estimated EB Amount**

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$1,000	02-Aug-2006	06-May-2007	0.8	\$38	n/a	\$38

Notes for DELAYED costs: The approximate cost to design, construct, and operate waste control facilities to retain all process generated wastewater and the contaminated rainfall runoff from date required through the date of expected compliance (May 6, 2007).

Item	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **\$1,000** TOTAL **\$38**

Screening Date 08-Sep-2006

Docket No. 2006-1541-AGR-E

PCW

Respondent R. J. Smelley Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31180

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101536886

Media [Statute] Water Quality

Enf. Coordinator Carolyn V. Lind

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$100	02-Aug-2006	28-Nov-2006	0.3	\$2	n/a	\$2

Notes for DELAYED costs: The approximate cost to properly dispose of dead animal carcasses from the date required through the date of compliance (November 28, 2006).

Item Description	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>				
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  TOTAL

**Screening Date** 08-Sep-2006 **Docket No.** 2006-1541-AGR-E **PCW**  
**Respondent** R. J. Smelley Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 31180 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101536886  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Carolyn V. Lind  
**Violation Number**

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 321.39(f)(18) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration  
**Secondary Rule Cite(s)**  
**Violation Description** Failure to prevent the growth of trees in the embankment of retention control structure ("RCS") No. 1 and inside RCS P-2, as documented during the investigation conducted August 2, 2006.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>				

**Matrix Notes** Failure to prevent the growth of trees inside of and on embankments of the RCS could or will expose human health and the environment to significant amounts of pollutants which would not exceed protective levels.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input checked="" type="checkbox"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

**Violation Base Penalty**

One quarterly event is recommended from the investigation date (August 2, 2006) through the date of screening (September 8, 2006).

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$2,000	02-Aug-2006	06-May-2007	0.8	\$76	n/a	\$76

Notes for DELAYED costs: The approximate cost to remove trees from the embankments and inside of the RCS structures and to obtain a liner certification from the date required through the date of expected compliance (May 8, 2007).

Item	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 **\$2,000** TOTAL **\$76**

Screening Date 08-Sep-2006

Docket No. 2006-1541-AGR-E

PCW

Respondent R. J. Smelley Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31180

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101536886

Media [Statute] Water Quality

Enf. Coordinator Carolyn V. Lind

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 321.39(f)(19)(F) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration  
 Secondary Rule Cite(s)

Violation Description Failure to maintain facilities including ponds, pipes, ditches, pumps, and diversion and irrigation equipment, as documented during the investigation conducted August 2, 2006. Specifically, the investigator observed that the northwest pen berm, beside an internal road to the west side of RCS No.1, had not been maintained to properly divert contaminated runoff along the waterway and into the RCS. Additionally, the investigator observed that solids accumulation in RCS P-2 has severely reduced the storage capacity of the structure and the solids have reached the level to potentially stop up the overflow pipe into RCS P-3.

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Matrix Notes	Failure to maintain berms or remove solids from the retention control structures will or could expose human health or the environment to significant amounts of pollutants which would not exceed protective levels.				

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

	daily	<input type="text"/>
	monthly	<input type="text"/>
mark only one	quarterly	<input checked="" type="checkbox"/>
use a small x	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the investigation date (August 2, 2006) through the date of screening (September 8, 2006).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$2,000	02-Aug-2006	06-May-2007	0.8	\$76	n/a	\$76

Notes for DELAYED costs: The approximate cost to ensure the northwest pen berm properly diverts contaminated runoff along the waterway and into the RCS and the approximate cost to remove solids from RCS P-2 from the date required through the date of expected compliance (May 6, 2007).

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 **\$2,000** TOTAL **\$76**

Screening Date 08-Sep-2006

Docket No. 2006-1541-AGR-E

PCW

Respondent R. J. Smelley Company, Inc.

Policy Revision 2 (September 2002)

Case ID No. 31180

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101536886

Media [Statute] Water Quality

Enf. Coordinator Carolyn V. Lind

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 321.39(f)(19)(J)(i) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration

Secondary Rule Cite(s)

Violation Description Failure to document the accurate number of acres utilized during each application event, as documented during the investigation conducted August 2, 2006. Specifically, the investigator documented that application rates were based on the "acres in field" and did not account for structures, composting, and pens located in those areas.

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="1%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one. use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

**Economic Benefit Worksheet**

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$200	02-Aug-2006	06-May-2007	0.8	\$8	n/a	\$8

Notes for DELAYED costs: The approximate cost to prepare documents which accurately reflects number of acres utilized during each application for each LMU from the date required through the date of expected compliance (May 6, 2007).

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>					
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 **\$200** TOTAL **\$8**

**Screening Date** 08-Sep-2006 **Docket No.** 2006-1541-AGR-E **PCW**  
**Respondent** R. J. Smelley Company, Inc. *Policy Revision 2 (September 2002)*  
**Case ID No.** 31180 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN101536886  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Carolyn V. Lind  
**Violation Number** 7

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 321.39(f)(19)(I)(iv) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration  
**Secondary Rule Cite(s)**  
**Violation Description** Failure to include predicted yield goals based on the major soil types within the identified land application areas in the pollution prevention plan, as documented during the investigation conducted August 2, 2006.

**Base Penalty** \$10,000

>> **Environmental, Property and Human Health Matrix**

OR

		Harm			
Release		Major	Moderate	Minor	
Actual					Percent
Potential					

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	
			X	Percent 1%

**Matrix Notes** Less than 20% of the rule requirement was not met.

**Adjustment** -\$9,900

**Base Penalty Subtotal** \$100

**Violation Events**

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

**Violation Base Penalty** \$100

One single event is recommended.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$3

**Violation Final Penalty Total** \$170

**This violation Final Assessed Penalty (adjusted for limits)** \$170

### Economic Benefit Worksheet

Respondent R. J. Smelley Company, Inc.  
 Case ID No. 31180  
 Reg. Ent. Reference No. RN101536886  
 Media [Statute] Water Quality  
 Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$100	02-Aug-2006	06-Apr-2007	0.7	\$3	n/a	\$3

Notes for DELAYED costs: The approximate cost to prepare annual crop predicted yield goal reports from the date required through the date of expected compliance (April 6, 2007).

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>				
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

**TOTAL**

# Compliance History

Customer/Respondent/Owner-Operator:	CN600477202	R. J. Smelley Company, Inc.	Classification: AVERAGE	Rating: 44.73
Regulated Entity:	RN101536886	R J SMELLEY DAIRY	Classification: POOR	Rating: 66.63
ID Numbers(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	71584
	WASTEWATER AGRICULTURE		REGISTRATION	WQ0002422000
	WASTEWATER AGRICULTURE		REGISTRATION	TXG015317
	WASTEWATER AGRICULTURE		PERMIT	TXG920021
	AIR NEW SOURCE PERMITS		AFS NUM	0737
Location:	WEST SIDE OF CATTLEBARON DR APPX 2 MILES SOUTH OF FM 1886 IN PARKER AND TARRANT COUNTIES		Rating Date: 9/1/2006	Repeat Violator: No
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	September 13, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 13, 2001 to September 13, 2006			

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

Name: Carolyn V. Lind Phone: (903) 535-5145

### 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 |

### Components (Multimedia) for the Site:

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

Effective Date: 08/07/2005 ADMINORDER 2004-1331-AGR-E  
 Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 321, SubChapter B 321.31(a)  
 Rqmt Prov: Section V OP  
 Description: Failure to prevent a discharge of wastewater into or adjacent to waters of the State.

Effective Date: 05/24/2004 ADMINORDER 2001-0906-AGR-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)  
 Description: Failure to maintain adequate wastewater application records.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)  
 TWC Chapter 26 26.121  
 Description: Failure to prevent an unauthorized discharge into or adjacent to waters of the state.

Effective Date: 05/23/2005 ADMINORDER 2001-0169-AGR-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(a)  
 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(I)(ii)  
 30 TAC Chapter 321, SubChapter B 321.39(f)(26)  
 Description: Failure to develop adequate pollution prevention plan.  
 Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 30 TAC Chapter 321, SubChapter B 321.39(f)(28)[G]  
 Rqmt Prov: 2.3.3 PERMIT  
 Description: Failure to take soil samples from 6 of the 7 land management units and failed submit soil analyses.

Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 321, SubChapter B 321.39(f)(29)  
Rqmt Prov: 2 .4 PERMIT  
Description: Failure to conduct annual waste/ww analysis.

Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)  
Description: Failure to prevent trees from growing on embankments of waste storage ponds.

Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121[G]  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D)  
30 TAC Chapter 321, SubChapter B 321.39(f)(24)(K)  
Description: Failure to prevent ponding and puddling in earthen pens.

Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.40(1)  
Description: Failing to ensure that all construction was completed to contain contaminated runoff during a 25-year, 24-hour rainfall event.

Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(24)(B)  
Description: Failed to provide runoff control measures for waste storage piles.

Classification: Minor  
Citation: 30 TAC Chapter 111, SubChapter B 111.201  
Description: Failed to follow the outdoor burning prohibition.

Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121[G]  
30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)  
Description: Failing to discontinue the application of waste to a field when phosphorus levels exceeded 200 parts per million (ppm) and by failing to submit a nutrient utilization plan.

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

C. Chronic excessive emissions events.  
N/A

D. The dates of investigations.

1	11/22/2005	(434542)
2	08/22/2005	(405012)
3	03/28/2005	(375736)
4	08/16/2004	(286244)
5	03/31/2004	(147307)
6	03/28/2005	(375246)
7	08/24/2006	(488932)
8	03/08/2004	(285826)

E. Written notices of violations (NOV).

Date: 08/26/2005 (405012) Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.46(b)(1)  
Rqmt Prov: PERMIT IA  
Description: Failure to maintain a copy of the notice of Intent and written authorization issued by the TCEQ in the pollution prevention plan.

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)  
Rqmt Prov: PERMIT IA  
Description: Failure to retain and use all manure, litter and wastewater generated by the CAFO in an appropriate and beneficial manner as provided by the general permit. Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(e)  
Rqmt Prov: PERMIT IA  
Description: Failure to store all manure/litter or sludge within the drainage area of a retention Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(c)(1)  
Rqmt Prov: PERMIT IA  
Description: Failure to remove the sludge from the lagoons in accordance with the design schedule to prevent the accumulation from exceeding the designed sludge volume. Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(b)(5)  
Rqmt Prov: PERMIT IA  
Description: Failure to prevent the growth of trees such that the root zone could intrude or compromise the structure of the liners of the retention control structures

Classification: Minor

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.43(j)(5)(B)  
Rqmt Prov: PERMIT IA  
Description: Failure to maintain earthen pens to ensure good drainage and minimize ponding.

Classification: Minor

- 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  
R. J. SMELLEY COMPANY, INC.  
RN101536886**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-1541-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 R. J. Smelley Company, Inc. ("R. J. Smelley Company") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and R. J. Smelley Company appear before the Commission and together stipulate that:

1. R. J. Smelley Company owns and operates a dairy located on the west side of Cattlebaron Drive, approximately two miles south of Farm-to-Market Road 1886, in Parker and Tarrant Counties, Texas (the "Facility").
2. R. J. Smelley Company 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 R. J. Smelley Company agree that the Commission has jurisdiction to enter this Agreed Order, and that R. J. Smelley Company is subject to the Commission's jurisdiction.
4. R. J. Smelley Company received notice of the violations alleged in Section II ("Allegations") on or about August 30, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by R. J. Smelley Company of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Nine Hundred Ninety Dollars (\$7,990) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). R.J. Smelley Company has paid Two Hundred Ninety-Seven Dollars (\$297) of the administrative penalty and One Thousand Five Hundred Ninety-Eight Dollars (\$1,598) is deferred contingent upon R.J. Smelley Company's timely and satisfactory compliance with all the terms of this Agreed Order. If R.J. Smelley Company fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require R.J. Smelley Company to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Ninety-Five Dollars (\$6,095) of the administrative penalty shall be payable in 23 monthly payments of Two Hundred Sixty-Five Dollars (\$265) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If R.J. Smelley Company fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of R.J. Smelley Company to meet the payment schedule of this Agreed Order constitutes the failure by R.J. Smelley Company to timely and satisfactorily comply with all the terms of this Agreed Order.

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 R. J. Smelley Company have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on or around November 28, 2006, R.J. Smelley Company has implemented the following corrective measures at the Facility:
  - a. Properly buried the three animal carcasses located in the burial pit and developed written protocols to ensure the proper collection and disposal of animal carcasses in the future;
  - b. Reconstructed the northwest pen berm located beside an internal road to the west side of retention control structure ("RCS") No. 1 so that it will properly divert contaminated runoff along the waterway and into the RCS; and
  - c. Removed and properly disposed of the trees that were growing in the embankment of RCS No. 1 and inside RCS P-2.
10. 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 R. J. Smelley Company has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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, R. J. Smelley Company is alleged to have:

1. Failed to store stockpiled manure in a contained area where contaminated runoff would be collected in a control structure, in violation of 30 TEX. ADMIN. CODE § 321.39(f)(24)(B) and Texas Pollutant Discharge Elimination System ("TPDES") Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006. Specifically, the investigator observed a manure stockpile located on the southwest side of the Facility, northwest of the heifer/calf area, in a location where contaminated runoff would not be directed to a control structure.
2. Failed to design, construct, and operate waste control facilities to retain all process generated wastewater and the contaminated rainfall runoff during a 25-year, 24-hour rainfall event from open lots and associated areas where concentration of animals prevents maintenance of forage crops during the regular growing season, in violation of 30 TEX. ADMIN. CODE § 321.40(1) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006. Specifically, the investigator observed animal feeding areas and open lots with significant manure accumulations located northwest of land management unit ("LMU") No. 1 and southeast of the hill near a gas well. The open lots and associated areas were not maintained or managed to retain or divert process generated wastewater or contaminated runoff to a control structure.
3. Failed to properly manage and dispose of dead animals within three days in a manner to prevent contamination of waters in the state or creation of a nuisance or public health hazard, in violation of 30 TEX. ADMIN. CODE § 321.40(11) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006. Specifically, the investigator observed three exposed animal carcasses located in the burial pit.
4. Failed to prevent the growth of trees in the embankment of RCS No. 1 and inside RCS P-2, in violation of 30 TEX. ADMIN. CODE § 321.39(f)(18) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006.
5. Failed to maintain facilities including ponds, pipes, ditches, pumps, and diversion and irrigation equipment, in violation of 30 TEX. ADMIN. CODE § 321.39(f)(19)(F) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006. Specifically, the investigator observed that the northwest pen berm, beside an internal road to the west side of RCS No.1, had not been maintained to properly divert contaminated runoff along the waterway and into the RCS. Additionally, the investigator observed that solids accumulation in RCS P-2 has severely reduced the storage capacity of the structure and the solids have reached the level to potentially stop up the overflow pipe into RCS P-3.
6. Failed to document the accurate number of acres utilized during each application event, in violation of 30 TEX. ADMIN. CODE § 321.39(f)(19)(J)(i) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006. Specifically, the investigator documented that application rates were based on the "acres in field" and did not account for structures, composting, and pens located in those areas.
7. Failed to include predicted yield goals based on the major soil types within the identified land application areas in the pollution prevention plan, in violation of 30 TEX. ADMIN. CODE

§ 321.39(f)(19)(I)(iv) and TPDES Registration No. WQ0002422000, Section V. Conditions of the Registration, as documented during an investigation conducted on August 2, 2006.

### III. DENIALS

R. J. Smelley Company generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that R. J. Smelley Company pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and R. J. Smelley Company'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: R. J. Smelley Company, Inc., Docket No. 2006-1541-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 R. J. Smelley Company shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Ensure application rates are documented to reflect the actual number of acres utilized for all LMUs during each application event; and
    - ii. Ensure that predicted yield goals based on the major soil types within identified land application areas are included in the pollution prevention plan.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii., as described in Ordering Provision No. 2.c. below.
  - c. Within 60 days after the effective date of this Agreed Order:
    - i. Ensure that the manure stockpile located on the northwest side of the heifer/calf area and the animal feeding areas and open lots located northwest of LMU No. 1 and southeast of the hill near a gas well are managed to contain the process generated wastewater and all contaminated rainfall runoff; and
    - ii. Remove solids from RCS P-2.

- d. Within 75 days after the effective date of this Agreed Order, re-certify the liner where trees have been removed from RCS P-2, in accordance with 30 TEX. ADMIN. CODE ch. 321, subch. B.; and
- e. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 2.c. through 2.d. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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 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:

Manager, Water Section  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Road  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon R. J. Smelley Company. R. J. Smelley Company 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 R. J. Smelley Company 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, R. J. Smelley Company's failure to comply is not a violation of this Agreed Order. R. J. Smelley Company shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. R. J. Smelley Company shall notify the Executive Director within seven days after R. J. Smelley Company 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 R. J. Smelley Company shall be made in writing to the Executive Director. Extensions are not effective until R. J. Smelley Company 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 R. J. Smelley Company 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 R. J. Smelley Company, or three days after the date on which the Commission mails notice of the Order to R. J. Smelley Company, 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



\_\_\_\_\_  
Date

4/3/07

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
R. J. Smelley Company, Inc.

David Smelley

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

12/21/06

Pres

**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.

**Texas Commission on Environmental Quality**  
**Investigation Report**  
**R J SMELLEY COMPANY INC**  
**CN600477202**

**R J SMELLEY DAIRY**

**RN101536886**

**Investigation #** 488932

**Incident #**

**Investigator:** JANA BAKER

**Site Classification**

CAFO REGISTRATION

**Conducted:** 08/02/2006 -- 08/07/2006

**SIC Code:** 0241

**NAIC Code:** 11212

**Program(s):** WASTEWATER AGRICULTURE

**Investigation Type :** Compliance Investigation

**Location :**

**Additional ID(s) :** WQ0002422000

**Address:** 4750 CATTLEBARON  
DR; FT WORTH, TX 76108

**Activity Type:** REGION 04 - DFW METROPLEX  
AFOCCITPDE - AFO CCI Mandatory TPDES/EPA  
(Non-319)

**Principal(s) :**

Role	Name
RESPONDENT	R J SMELLEY COMPANY INC

**Contact(s) :**

Role	Title	Name	Phone
Regulated Entity Contact	PRIVATE CONSULTANT	MR A. C. LOWTHER	Fax (254) 445-4331 Work (254) 445-4121
Regulated Entity Contact	PRESIDENT	MR DAVID SMELLEY	Work (817) 448-8520
Regulated Entity Mail Contact	OWNER, RJ SMELLEY COMPANY, INC	MR RICHARD SMELLEY	Work (817) 448-8520

**Other Staff Member(s) :**

Role	Name
Investigator	GERRY KENDALL
QA Reviewer	MICHAEL MARTIN
Supervisor	SIDNEY SLOCUM

**Associated Check List**

<u>Checklist Name</u>	<u>Unit Name</u>
AFO IP Authorization New	1
AFO IP Operations New	2
AFO IP Records New	3
CAFO IP Records New	4

**Investigation Comments :**

INTRODUCTION:

This unannounced investigation was conducted on August 2, 2006, with no regulated entity representative, and Gerry Kendall, TCEQ investigator, present. The investigation on August 2nd consisted of a physical investigation of the regulated entity. No one was found in either of the regulated entity offices, so no exit interview was conducted with an on-site representative. After leaving the regulated entity, Lowther Consulting, Inc., was called and notified of the investigation; they were told violations had been documented during the site investigation, and a request was made to provide the

pollution prevention plan (PPP) for review by Friday, August 4 (See Attachment I). A copy of the initial exit interview form was faxed to Lowther Consulting on August 3, 2006 (See Attachment II). This form included a written records request. In response, Lowther Consulting sent notice on August 4th they would need until Monday to provide the records (See Attachment III).

The records review was conducted on August 7, 2006, and a complete exit interview form was signed by Ms. Marian LeClear of Lowther Consulting. The original of the exit interview form was provided to Ms. LeClear. Several attempts were made to fax a copy of the finalized exit interview, including all changes, to Mr. David Smelley, operator, on August 23 and 24, 2006 (See Attachment IV) when he could not be reached by phone (Refer to Attachment I).

#### GENERAL REGULATED ENTITY AND PROCESS INFORMATION:

R.J. Smelley Dairy is permitted for a head count capacity of 1800 animals. At the time of the investigation, the regulated entity had about 1500 head of dairy cattle in confinement and around 1700 total head on-site. Some maintenance problems were observed during the investigation.

The dairy uses eight man-made retention control structures (RCS) with a total certified capacity of 47.47 acre-feet. Six of the RCS are on the north side of the complex and contain runoff from the North pens and the wash water from the milk parlor; the other two RCS are on the south side of the complex and contain runoff from the calf/heifer area, a manure storage area, and some of the South pens (See Attached Site Map). A permanent pond marker was observed in RCS 2A and P-5. At the time of the investigation, freeboard was observed to be approximately ten feet in RCS 2A and about twelve feet in P-5. The certified capacity of P-2 is 4.38 ac-ft; at the time of this investigation, the structure was full of solids accumulation. (See Attachment V: Photo 1 and 2) The total sludge accumulation allowed for all 6 of the North RCS is 6.04 ac-ft. (See Attachment VI)

No signs of significant erosion at the RCS were noted. In addition, no animal intrusions or signs of mechanical or structural damage were observed on the embankments. However, trees were noted growing on the embankments of RCS #1 and inside of P-2. (See Attachment V: Photo 1, 2, and 3) This will be addressed as a repeated violation; trees have been documented on the RCS during investigations on July 31, 2001, December 29, 2003 (See Attachment VII), and May 31, 2005 (See Attachment VIII). The RCS are lined with in-situ clay soils, and a liner certification was available for each RCS. However, the trees growing inside P-2 will necessitate a liner re-certification for that structure.

Modifications have been made to several aspects of the regulated entity during the last five years. The retention control system has been changed by the removal of RCS #3 from the system; the changes were documented in the pollution prevention plan (PPP). Also, several gas wells have been drilled around the regulated entity. One well is located near a calesche hill on the west side of the complex near land management unit (LMU) 1. Another well was placed inside the drainage area on the south side of the complex near the area for drying manure.

Buffer distances between pens, RCS, LMUs, and wells did not appear to be properly maintained. A well is located at the corner of the closed restaurant in LMU #2; no buffer zones are indicated on the LMU map (See Attachment IX).

Pens are cleaned weekly. Manure was not properly stockpiled within the drainage area of the regulated entity (See Attachment V: Photo 13), but no significant ponding or puddling was observed in the confinement pens. The uncontained manure pile near the calf/heifer pens will be addressed as a repeated violation; this violation was previously noted during July 31, 2001 and May 31, 2005 investigations. In addition, several uncontained areas with significant manure accumulations where animals were being fed and maintained were noted (See Attachment V: Photos 7 thru 12). One area is on the west side of the complex on top of a calesche hill Northwest of LMU #1 where dry cows are fed. To the South and Southeast of the hill near a gas well is another group of feeding areas which had no grass and an accumulation of manure. This will be addressed as a repeated violation due to previously noted instances on December 29, 2003 and May 31, 2005.

All earthen berms and waterways appeared to not be well maintained and operated to contain the runoff from the confinement pens (See Attachment V: Photo 5). This violation is a repeat of the

violations noted on July 31, 2001 and May 31, 2005. Concrete lanes are scraped or flushed daily. Silage is used by this regulated entity; the silage is stored within the drainage area of a RCS so the liquor runoff enters the structure.

The regulated entity uses an on-site burial pit for dead animal disposal and is not properly managed. At the time of the investigation, three carcasses were visible in the pit (See Attachment V: Photo 4). One of the carcasses was very desiccated, indicating it had been more than three days since death. The mortality management records (Attachment X) indicated the three fatalities had occurred from July 27 thru July 31, making the oldest carcass five days. This violation was previously documented on May 31, 2005. Flies are controlled with spray. Many flies were observed at the time of the investigation.

Additional potential pollutants noted at the site included iodine, chlorine, and food-grade acids and soaps; the potential pollutants appeared to be properly stored. Some of the trash generated by the regulated entity is placed in a dumpster; however during this investigation a large pile of waste from the dairy, including tires, was found on the east side of the caleche hill (See Attachment V: Photo 6). The pile appeared to be ready for either burning or burial; neither of these methods are acceptable for those materials. An additional issue will be used to address this. There is one 10,000-gallon diesel storage tank at this site; the tank is registered with the TCEQ.

The PPP was mostly up to date and was reported to be maintained on-site. Most best management practices and technical requirements were documented. There was indefinite documentation of the measures used to prevent contaminated run-on water into the RCS, and an additional issue will be issued to address this. All required records and logs were present but some needed to be updated. The employee training logs noted during the records review had not been updated since September 2004; on August 7, 2006, updated training records were received in the Stephenville Office (See Attachment XI). In addition, the maps provided in the PPP did not reflect the current conditions at the dairy. The gas wells have not been added, water well buffer zones are not clearly defined, structures in LMUs are not marked, and some pens do not appear on the maps; an additional issue will currently be used to address this.

The weekly water level log was being maintained, and all instances of encroachment into the required storage capacity were properly logged (See Attachment XII). In addition, a reading of the RCS level was taken for all occurrences of rainfall greater than one inch. A recharge feature certification for the regulated entity was in the PPP. No confinement pens or RCS are in a 100-yr flood plain.

Wastewater can be pumped to three authorized LMUs (Refer to Attachment XIII). LMU #1 is irrigated using a side roll system; LMU #3 and LMU #2 are irrigated using reel guns. Tailwater from all the LMUs is controlled with the application rate. No evidence of off-site runoff from or significant ponding or puddling in the LMUs was observed. Manure is composted at the regulated entity in an area Northwest of the main dairy complex. Buffer distances between LMUs and surface waters did appear to be properly maintained.

Irrigation records were available for review during the record review. Some problems with the regulated entity's application rate calculations and other application records were noted (See Attachment XIV). The acreage used for the calculations of application rates are not consistent with on-site observations. The amount of land available for application in each of the three LMUs has not been reduced to account for structures, composting, and pens located in those areas. A violation will be issued to address this inadequacy; a similar violation was noted on December 29, 2003. In addition, the predicted yield goals based on the soil types in the LMUs was not found during the record review; this will be addressed as a violation as well. Another concern noted during the review of the application records was an instance of 8 hours of irrigation when the rainfall log showed 2.5 inches of rainfall the same day; at this time, an additional issue will address this concern. Since manure is composted on-site, no records are needed for the removal of a finished compost product.

The soil analysis results provided on February 9, 2006 for the 2005 sampling event show no LMUs have extractable phosphorus levels greater than 200 ppm. Samples were taken for analysis from all applicable LMUs under the general permit and at the appropriate depths. Soil samples were taken within the same 45-day time frame and were submitted at the required time for the general permit. However, this was not in compliance with the time frame set out in Agreed Order 2001-0169-AGE-E. All required parameters were included in the testing and appropriate test methods utilized. At this time,

the nutrient management plan has been developed.

**BACKGROUND:**

The last significant rainfall event of 1.0 inches occurred on July 1, 2006. An appropriately sized on-site rain gauge was not observed, but the rainfall log was maintained (See Attachment IX). A discharge was documented on August 6, 2004; the discharge was not exempted by the chronic/catastrophic rainfall provisions of the regulations.

The dairy is operating under a temporary TPDES registration issued March 10, 2003 and had an expiration date of July 27, 2004. The temporary general permit under which this regulated entity was operating was denied, therefore the old registration remains in effect until a new permit is issued. An application for a new permit was received in Austin on August 4, 2006, and the pending permit number assigned to this regulated entity is WQ0004806-000. R.J. Smelley Company, Inc dba R.J. Smelley Dairy currently has a compliance history rating of "poor"

The regulated entity was last investigated on May 31, 2005. During that investigation, violations were documented for uncontained calf pens, trees on the retention control structures and excessive solids accumulation in P-2.

**ADDITIONAL INFORMATION:**

Receiving water adjacent to the dairy was free of manure/wastewater contaminants. No lab samples were taken during this investigation. No dipping vats or pest and parasite control units were present at the regulated entity.

**OUTSTANDING ALLEGED VIOLATIONS**

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**Track No:** 250324      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.39(f)(24)(B)**

**PERMIT V**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/22/2006

An uncontained manure pile was noted on the northwest side of the heifer / calf area on the southwest side of the dairy complex. Runoff from this manure pile would not enter the containment structures.

**Recommended Corrective Action:** It is recommended all manure stockpiles be kept inside the containment area where contaminated runoff would be collected into the control structures. The stockpiles should be in well drained areas with adequately sloped sides to ensure proper drainage and no ponding of water.

**Resolution:**

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**Track No:** 250346      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.40(1)**

**PERMIT V**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/22/2006

Several uncontained areas with significant manure accumulations where animals were being fed and maintained were noted during the investigation. One area is on the west side of the complex on top of a caleche hill Northwest of LMU #1 where dry cows are fed. To the South and Southeast of the hill near a gas well is another group

of feeding areas which had no grass and an accumulation of manure. Contaminated runoff from these areas would not enter the control structures of this regulated entity.

**Recommended Corrective Action:** It is recommended all waste control facilities be designed, constructed, maintained, and managed to retain the process generated wastewater and all contaminated rainfall runoff from open lots and associated areas.

**Resolution:**

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**Track No:** 250385                      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.40(11)**

**PERMIT V.**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/22/2006

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The bury pit found at this regulated entity had several carcasses exposed to the elements. Two of the dead animals appeared bloated while the third was badly desiccated. This indicated at least one of the animals had not been properly buried for some time.

**Recommended Corrective Action:** It is recommended that all mortalities be attended to as soon as they are discovered; approved methods of handling include removal from the regulated entity, burial at least 150 feet from any waterways with no less than three feet of cover over the carcass, or on-site composting in a contained area.

**Resolution:**

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**Track No:** 250405                      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.39(f)(18)**

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/22/2006

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Trees were noted growing inside P-2, compromising the liner of the structure. In addition, several small trees were noted growing on the embankment of RCS #1; if allowed to continue to grow, these trees could compromise the liner of RCS #1.

**Recommended Corrective Action:** It is recommended the trees be cut down in a manner to not disturb the liners; it is further recommended the retention control structures be checked regularly to ensure no regrowth of trees occurs. In addition, new liner certifications, including documentation the sample cores were plugged, should be provided for all structures where trees were noted.

**Resolution:**

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**Track No:** 250429                      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.39(f)(19)(F)**

**PERMIT V.**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/23/2006

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Several maintenance issues were noted during the investigation. The Northwest pen berm beside an internal road to the west side of RCS #1 had not been maintained to properly divert contaminated runoff along the waterway and into the RCS.

In addition, the solids accumulation in P-2 has reached the level where it could stop up the overflow pipe into P-3. This accumulation has severely reduced the storage capacity of the structure.

**Recommended Corrective Action:** It is recommended all facilities including ponds, pipes, ditches, pumps, and diversion and irrigation equipment be maintained to insure

ability to fully comply with the terms of this subchapter. It is further recommended that all employees be regularly trained to include issues of proper maintenance of equipment, preventing spills and discharges, and clean up procedures.

**Resolution:**

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**Track No:** 250459                      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.39(f)(19)(J)(i)**  
**PERMIT V.**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/23/2006

The application records for lands owned, operated, or controlled by the regulated entity are required to include: date of application, location of the specific application site, number of acres utilized during each application event, the acreage of each individual crop, and actual annual yield. In addition, the manure application records should also include: number of dry tons applied, the percent nitrogen based on a dry basis, and the percent moisture content of the manure.

The application records provided for review by this regulated entity appeared to contain the required information. However upon investigation it was found the application rates were based on the "acres in field" which did not accurately reflect the acreage available for application. For instance, LMU #2 is shown to have 75 acres, but this acreage includes the area occupied by the operator's home and a restaurant. In addition, some of the Northern part of the LMU near the intermittent creek is wooded, preventing irrigation.

The acreage shown for LMU #1 is recorded as 45 acres, but this also includes heifer and calf pens. LMU #3 application calculations are based on 52 acres which includes a large composting area. Without accurate information regarding the land available for application, the nutrient application rates can not be reliable.

**Recommended Corrective Action:** It is recommended all waste and/or wastewater application conducted on any lands owned, operated, or controlled by the regulated entity be included in the on-site records to include all of the information required by this Subchapter B provision.

**Resolution:**

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**Track No:** 250479                      **Compliance Due Date:** No Date Entered

**30 TAC Chapter 321.39(f)(19)(I)(iv)**  
**PERMIT V.**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/23/2006

During the review of the pollution prevention plan, no information regarding the annual predicted yield goals was found.

**Recommended Corrective Action:** It is recommended all information relevant to the land application requirements of this subchapter be maintained in the PPP and updated as appropriate.

**Resolution:**

**AREA OF CONCERN**

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**Track No:** 250483                      **Resolution Date:** August 23 06

**30 TAC Chapter 321.41(a)(2)**  
**PERMIT V.**

The registrant must comply with the applicable provisions in 30 TAC §§321.31 - 321.47 and subsequent updates and the Clean Water Act, 40 CFR § 412.

**Alleged Violation:**

Investigation: 488932

Comment Date: 08/23/2006

No documentation was available to show the employees had been trained since September 15, 2004.

**Recommended Corrective Action:** It is recommended the regulated entity representative conduct the training of employees according to the schedule outlined in the PPP; it is also recommended the training be documented with the date, name of those trained, topics covered, and signature of the trainer and the log containing the information be placed in the PPP.

**Resolution:** On August 7, 2006, copies of logs from several employee training sessions were received in the Stephenville Office.

**Additional Issues**

Description

Additional Comments

Were there other concerns noted that involve requirements under other statutes or regulations?

It appeared trash generated by this regulated entity was being accumulated in an area of the east side of the caleche hill where the dry cows are fed in preparation to either burning or burying the material. The pile noted during the investigation contained items prohibited from disposal from either of those means.

Was irrigation conducted when the ground was frozen, saturated, or during rainfall?

It is recommended all items other than brush generated at the regulated entity be removed from the pit for proper disposal.

Irrigation records indicated 8 hours of irrigation onto land management unit 2 occurred on February 24, 2006. The rainfall records for that day indicated 2.5 inches of rainfall.

Does the PPP include a description of measures taken to minimize entry of non-process water into the retention basins?

It is recommended irrigation practices be conducted to prevent application onto frozen or saturated ground or during rainfall events.

During the review of the pollution prevention plan, no information regarding how uncontaminated runoff would be diverted away from the retention facilities was found.

Other Alleged Violations

It is recommended any measures currently in use or those which will be implemented to divert uncontaminated runoff away from the control structures be documented in the pollution prevention plan.

The application maps provided for this regulated entity do not accurately reflect the conditions observed on site. The maps do not include well buffers for at least one of the water wells. In addition, the acreages shown on the maps include areas not available for irrigation including a restaurant building, the operator's home, the composting area, and calf and heifer pens.

It is recommended the application maps be

changed to include these areas and the available acreages adjusted accordingly.

Signed J. Claire Baker  
Environmental Investigator

Date 8/24/2006

Signed [Signature]  
Supervisor

Date 08/24/06

**Attachments: (in order of final report submittal)**

- Enforcement Action Request (EAR)
- Letter to Facility (specify type) : NOE
- Investigation Report
- Sample Analysis Results
- Manifests
- NOR

- Maps, Plans, Sketches
- Photographs
- Correspondence from the facility
- Other (specify) :  
CCI report - 12/29/2005  
CCI report - 5/31/2005