EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0536-AGR-E **TCEQ ID:** RN101528586 **CASE NO.:** 33129

RESPONDENT NAME: John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: JM Howle Jr. Dairy, located on the south side of County Road ("CR") 461, approximately two miles southwest of the intersection of CR 461 and CR 386, Erath County

TYPE OF OPERATION: Dairy

SMALL BUSINESS: X **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 Respondents has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on July 30, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468

Respondent: Mr. John Morgan Howle, Jr., and Allene Howle, Owners, JM Howle Jr. Dairy, 5399 County Road 461, Stephenville,Texas 76401-8514

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** January 11, 2007 **Date of NOE Relating to this Case:** Febraury 28, 2007 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WATER** Failure to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB") [30 Tex. Admin. Code § 321.42(s)]	**Total Assessed:** $3,030 **Total Deferred:** $606 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,424 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that on March 13, 2007, Mr. and Mrs. Howle submitted a comprehensive nutrient management plan ("CNMP") to the Texas State Soil and Water Conservation Board ("TSSWCB") for certification. **Ordering Provisions:** 2) The Order will require the Respondents to: a. Respond completely and adequately, as determined by the TSSWCB, to all requests for information concerning the CNMP within 30 days after the date of such requests or by any other deadline specified in writing; and b. Within 120 days after the effective date of this Agreed Order, submit certification of compliance that the Facility has developed and is operating under a CNMP certified by the TSSWCB. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision January 9, 2007*

TCEQ

DATES					
Assigned	5-Mar-2007				
PCW	2-Apr-2007	Screening	2-Apr-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy		
Reg. Ent. Ref. No.	RN101528586		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33129	No. of Violations	1
Docket No.	2007-0536-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 1% Enhancement — *Subtotals 2, 3, & 7* $30

Notes: The penalty is adjusted for one NOV with violations not same or similar to those cited in this action and for one notice of intent to conduct a self-audit.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondents do not meet the culpability criteria.

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

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

Notes: The Respondents do not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$700
Approx. Cost of Compliance	$10,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,030

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

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

Notes:

Final Penalty Amount $3,030

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,030

DEFERRAL — 20% Reduction — *Adjustment* -$606

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,424

Screening Date 2-Apr-2007 **Docket No.** 2007-0536-AGR-E **PCW**

Respondent John Morgan Howle, Jr. and Allene Howle dba JM Howle *Policy Revision 2 (September 2002)*

Case ID No. 33129 *PCW Revision January 9, 2007*

Reg. Ent. Reference No. RN101528586

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> **Compliance History *Site* Enhancement (Subtotal 2)**

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	1	2%
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 judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 1%

>> **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 penalty is adjusted for one NOV with violations not same or similar to those cited in this action and for one notice of intent to conduct a self-audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 1%

Screening Date 2-Apr-2007 **Docket No.** 2007-0536-AGR-E **PCW**

Respondent John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dair

Policy Revision 2 (September 2002)

Case ID No. 33129

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101528586

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

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

Violation Description Failed to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3

76 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended based on the investigation date (January 11, 2007) through the date of screening (April 2, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $700

Statutory Limit Test

Violation Final Penalty Total $3,030

This violation Final Assessed Penalty (adjusted for limits) $3,030

Economic Benefit Worksheet

Respondent John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy
Case ID No. 33129
Reg. Ent. Reference No. RN101528586
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$10,000	31-Dec-2006	31-Dec-2007	1.0	$33	$667	$700
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to develop and implement a comprehensive nutrient management plan. Date required is the date the plan was required to be developed and implemented. Final date is the expected date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	$10,000	TOTAL	$700

Compliance History

Customer/Respondent/Owner-Operator:	CN602739351	HOWLE, JOHN MORGAN JR	Classification: AVERAGE	Rating: 0.33
Regulated Entity:	RN101528586	JM HOWLE JR DAIRY	Classification: AVERAGE	Site Rating: 0.33
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE		PERMIT REGISTRATION	WQ0003154000 TXG010019
Location:	LOCATED ON S SIDE OF CR 461, APPROX 2 MI SW OF INTX OF CR 461 & CR 386, ERATH CO, TX			Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 02, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 02, 2002 to April 02, 2007			

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

Name: Lynley Doyen Phone: 512-239-1364

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.

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 08/04/2003 (60335)
2 05/26/2004 (266324)
3 01/06/2005 (344194)
4 05/12/2005 (380857)
5 01/05/2006 (437146)
6 02/27/2007 (542237)

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

Date: 03/15/2005 (380857)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(11)
Description: Failure to maintain RCS to accommodate 25yr/24hr rainfall event.

F. Environmental audits.

Notice of Intent Date: 07/10/2003 (251204)
No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History

Customer/Respondent/Owner-Operator:	CN602739344	HOWLE, ALLENE	Classification: AVERAGE	Rating: 0.33
Regulated Entity:	RN101528586	JM HOWLE JR DAIRY	Classification: AVERAGE	Site Rating: 0.33
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE		PERMIT REGISTRATION	WQ0003154000 TXG010019
Location:	LOCATED ON S SIDE OF CR 461, APPROX 2 MI SW OF INTX OF CR 461 & CR 386, ERATH CO, TX			Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 02, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 02, 2002 to April 02, 2007			

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

Name: Lynley Doyen Phone: 512-239-1364

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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.

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.)

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G. Type of environmental management systems (EMSs).

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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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
JOHN MORGAN HOWLE, JR.	§	**TEXAS COMMISSION ON**
AND ALLENE HOWLE DBA	§	
JM HOWLE JR. DAIRY	§	
RN101528586	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0536-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 John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy ("Mr. and Mrs. Howle") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. and Mrs. Howle, appear before the Commission and together stipulate that:

1. Mr. and Mrs. Howle own a dairy located on the south side of County Road ("CR") 461, approximately two miles southwest of the intersection of CR 461 and CR 386 in Erath County, Texas (the "Facility").

2. Mr. and Mrs. Howle have caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

3. The Commission and Mr. and Mrs. Howle agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. and Mrs. Howle are subject to the Commission's jurisdiction.

4. Mr. and Mrs. Howle received notice of the violations alleged in Section II ("Allegations") on or about March 5, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. and Mrs. Howle of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Thirty Dollars ($3,030) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. and Mrs. Howle have paid Two Thousand Four Hundred Twenty-Four Dollars ($2,424) of the administrative penalty and Six Hundred Six Dollars ($606) is deferred contingent upon Mr. and Mrs. Howle's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. and Mrs. Howle fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. and Mrs. Howle to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Mr. and Mrs. Howle 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 March 13, 2007, Mr. and Mrs. Howle submitted a comprehensive nutrient management plan ("CNMP") to the Texas State Soil and Water Conservation Board ("TSSWCB") for certification.

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 Mr. and Mrs. Howle 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 owners of the Facility, Mr. and Mrs. Howle are alleged to have failed to develop and operate under a CNMP certified by the TSSWCB, in violation of 30 TEX. ADMIN. CODE § 321.42(s), as documented during an investigation conducted on January 11, 2007.

III. DENIALS

Mr. and Mrs. Howle generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. and Mrs. Howle pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. and Mrs. Howle'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: John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy, Docket No. 2007-0536-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. Mr. and Mrs. Howle are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. It is further ordered that Mr. and Mrs. Howle shall undertake the following technical requirements:

   a. Respond completely and adequately, as determined by the TSSWCB, to all requests for information concerning the CNMP within 30 days after the date of such requests or by any other deadline specified in writing;

   b. Within 120 days after the effective date of this Agreed Order, submit certification of compliance that the Facility has developed and is operating under a CNMP certified by the TSSWCB. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

      The certification shall be submitted to:

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

with a copy to:

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

4. The provisions of this Agreed Order shall apply to and be binding upon Mr. and Mrs. Howle. Mr. and Mrs. Howle are 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. and Mrs. Howle fail 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. and Mrs. Howle's failure to comply is not a violation of this Agreed Order. Mr. and Mrs. Howle shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. and Mrs. Howle shall notify the Executive Director within seven days after Mr. and Mrs. Howle become 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. and Mrs. Howle shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Mrs. Howle receive 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. and Mrs. Howle 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), the effective date is the date of hand-delivery of the Order to Mr. and Mrs. Howle, or three days after the date on which the Commission mails notice of the Order to Mr. and Mrs. Howle, 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

_____ 8/16/2007
For the Executive Director Date

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

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

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

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

_____ 5-24-07
Signature Date

John Morgan Howle, Jr. Owner
Name (Printed or typed) Title
Authorized Representative of
John Morgan Howle, Jr. dba JM Howle Jr. Dairy

_____ 5-24-07
Signature Date

Allene Howle Owner
Name (Printed or typed) Title
Authorized Representative of
Allene Howle dba JM Howle Jr. Dairy

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.