

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2007-1057-AGR-E    **TCEQ ID:** RN102313244    **CASE NO.:** 34109

**RESPONDENT NAME:** Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Kuiper Dairy, 5040 County Road 209, Erath County</p> <p><b>TYPE OF OPERATION:</b> Dairy</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondents have expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 12, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Glen Simonton, Owner, Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy, Rural Route 1 Box 501D, Port Royal, Pennsylvania 17082                            Mr. Clark Simonton, Jr., Attorney-In-Fact for Glen Simonton, Rural Route 1, Box 501D, Port Royal, Pennsylvania 17082                            Mr. A.C. Lowther, P.E., Lowther Consulting, Inc., P.O. Box 78, Dublin, Texas 76446  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Record Review Relating to this Case:</b> June 1, 2007</p> <p><b>Date of NOE Relating to this Case:</b> June 8, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failure to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondents failed to respond to requests for additional information from the TSSWCB and the TCEQ by February 5, 2007 [30 TEX. ADMIN. CODE § 321.42(s)].</p>	<p><b>Total Assessed:</b> \$2,320</p> <p><b>Total Deferred:</b> \$464  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,856</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on April 2, 2007, the Respondents began operating under a CNMP certified by the TSSWCB.</p>

Additional ID No(s): WQ0003199000



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

<b>DATES</b>	Assigned	11-Jun-2007	Screening	3-Jul-2007	EPA Due	
	PCW	3-Jul-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy		
Reg. Ent. Ref. No.	RN102313244		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	34109	No. of Violations	1	
Docket No.	2007-1057-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

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

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

<b>Compliance History</b>	41% Enhancement	Subtotals 2, 3, & 7	\$820
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Notes: The penalty is enhanced due to one NOV with violations not same or similar to those cited in this action and two agreed final enforcement orders containing a denial of liability and is reduced due to one notice of intent to conduct a self-audit.

<b>Culpability</b>	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	25% Reduction	Subtotal 5	\$500
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondents achieved compliance on April 2, 2007.

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$176	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$2,320
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	\$2,320
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<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$2,320
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<b>DEFERRAL</b>	20% Reduction	Adjustment	-\$464
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,856
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Screening Date 3-Jul-2007

Docket No. 2007-1057-AGR-E

PCW

Respondent Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy

Policy Revision 2 (September 2002)

Case ID No. 34109

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102313244

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 NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	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) 41%

>> 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 enhanced due to one NOV with violations not same or similar to those cited in this action and two agreed final enforcement orders containing a denial of liability and is reduced due to one notice of intent to conduct a self-audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 41%

<b>Screening Date</b> 3-Jul-2007	<b>Docket No.</b> 2007-1057-AGR-E	<b>PCW</b>
<b>Respondent</b> Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34109		<i>PCW Revision May 25, 2007</i>
<b>Reg. Ent. Reference No.</b> RN102313244		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Lynley Doyen		
<b>Violation Number</b>	1	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 321.42(s)	
<b>Violation Description</b>	Failed to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondents failed to respond to requests for additional information from the TSSWCB and the TCEQ by February 5, 2007.	
<b>Base Penalty</b>		\$10,000

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

OR	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="0%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>				
		Major	Moderate		Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<input type="checkbox"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
single event	<input type="checkbox"/>	

**Violation Base Penalty**

Two monthly events are recommended from the February 5, 2007 deadline to submit requested information to the TSSWCB until the CNMP was certified and implemented on April 2, 2007.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$176"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,320"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,320"/>	

## Economic Benefit Worksheet

**Respondent:** Penn-Cal, L.L.C. and Glen Simonton dba Kulper Dairy  
**Case ID No.:** 34109  
**Reg. Ent. Reference No.:** RN102313244  
**Media:** 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
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	2-Apr-2007	0.3	\$8	\$168	\$176
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to develop and implement a comprehensive nutrient management plan. Date required is the date the plan was required to be certified and implemented. Final date is the 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**

\$176

# Compliance History

Customer/Respondent/Owner-Operator: CN600795793 Penn-Cal, L.L.C. Classification: AVERAGE Rating: 23.18  
Regulated Entity: RN102313244 KUIPER DAIRY Classification: AVERAGE Site Rating: 23.18  
ID Number(s): AIR NEW SOURCE PERMITS PERMIT 24308  
AIR NEW SOURCE PERMITS ACCOUNT NUMBER EF00801  
WASTEWATER AGRICULTURE PERMIT WQ0003199000  
WASTEWATER AGRICULTURE PERMIT TX0121649  
Location: 5040 CR 209, ERATH CO, TX Rating Date: 9/1/2006  
Repeat Violator: NO  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: July 3, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 3, 2002 to July 3, 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.

Effective Date: 07/21/2003

ADMINORDER 2002-1082-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(A)  
TWC Chapter 26 26.121  
Rqmt Prov: SP 2.2.1 PERMIT

Description: Failure to prevent irrigated wastewater from entering the waters in the state.

Effective Date: 12/15/2005

ADMINORDER 2005-0627-AGR-E

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(A)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(C)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
30 TAC Chapter 321, SubChapter B 321.40(8)  
Rqmt Prov: S.P. 2.2.1. PERMIT  
S.P. 2.2.2., 2.2.4., 2.2.5 PERMIT

Description: Failure to operate and maintain irrigation equipment to prevent the application of wastewater when the ground is saturated, the pooling and puddling of wastewater, and the discharge of irrigated wastewater from the Facility.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(E)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
30 TAC Chapter 321, SubChapter B 321.40(8)  
Rqmt Prov: S.P. 1.3.2., 1.3.3., & 2.2.5. PERMIT

Description: Failure to dewater the wastewater storage ponds (WSPs) to prevent the discharge of wastewater the WSPs No. 1. Specifically, irrigation equipment was not maintained or provided to dewater the WSPs.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(E)  
Rqmt Prov: S.P. 1.3.2. PERMIT

Description: Failure to maintain compliance with WSPs minimum capacity requirement to accommodate the rainfall and rainfall runoff from a 25 year - 24 hour event.

- 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 08/22/2002 (1046)
- 2 05/08/2003 (34964)
- 3 10/07/2003 (249129)
- 4 02/03/2004 (260393)
- 5 02/09/2005 (345197)
- 6 02/09/2005 (347203)
- 7 08/25/2005 (407007)
- 8 03/29/2006 (457764)
- 9 02/19/2007 (540324)
- 10 03/29/2007 (543732)

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

Date: 01/25/2005 (347203)

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(C)  
Description: Failure to not irrigate when the ground was saturated  
Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D)  
Description: Failure to conduct irrigation practices to reduce or minimize ponding or puddling of wastewater on the site, pollution of waters in the state, and prevent the occurrence of nuisance conditions.  
Classification: Moderate

F. Environmental audits.

Notice of Intent Date: 12/11/2003 (263142)  
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:	CN602755837	SIMONTON, GLEN	Classification: AVERAGE	Rating: 23.18
Regulated Entity:	RN102313244	KUIPER DAIRY	Classification: AVERAGE	Site Rating: 23.18
ID Number(s):	AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE		PERMIT ACCOUNT NUMBER PERMIT PERMIT	24308 EF0080I WQ0003199000 TX0121649
Location:	5040 CR 209, ERATH CO, TX			Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	July 3, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 3, 2002 to July 3, 2007			
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Name: Lynley Doyen	Phone: 512-239-1364			

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

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30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
30 TAC Chapter 321, SubChapter B 321.40(8)  
Rqmt Prov: S.P. 2.2.1. PERMIT  
S.P. 2.2.2., 2.2.4., 2.2.5 PERMIT

Description: Failure to operate and maintain irrigation equipment to prevent the application of wastewater when the ground is saturated, the pooling and puddling of wastewater, and the discharge of irrigated wastewater from the Facility.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(E)  
30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
30 TAC Chapter 321, SubChapter B 321.40(8)  
Rqmt Prov: S.P. 1.3.2., 1.3.3., & 2.2.5. PERMIT

Description: Failure to dewater the wastewater storage ponds (WSPs) to prevent the discharge of wastewater the WSPs No. 1. Specifically, irrigation equipment was not maintained or provided to dewater the WSPs.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(E)  
Rqmt Prov: S.P. 1.3.2. PERMIT

Description: Failure to maintain compliance with WSPs minimum capacity requirement to accommodate the rainfall and rainfall runoff from a 25 year - 24 hour event.

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 08/22/2002 (1046)
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Date: 01/25/2005 (347203)

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Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(C)  
Description: Failure to not irrigate when the ground was saturated

Classification: Moderate

Self Report? NO  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(D)  
Description: Failure to conduct irrigation practices to reduce or minimize ponding or puddling of wastewater on the site, pollution of waters in the state, and prevent the occurrence of nuisance conditions.

Classification: Moderate

F. Environmental audits.

Notice of Intent Date: 12/11/2003 (263142)  
No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PENN-CAL, L.L.C. AND GLEN  
SIMONTON DBA KUIPER DAIRY  
RN102313244

§  
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§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-1057-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 Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy ("Penn-Cal and Mr. Simonton") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Penn-Cal and Mr. Simonton appear before the Commission and together stipulate that:

1. Penn-Cal and Mr. Simonton own a dairy located at 5040 County Road 209 in Erath County, Texas (the "Facility").
2. Penn-Cal and Mr. Simonton 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 Penn-Cal and Mr. Simonton agree that the Commission has jurisdiction to enter this Agreed Order, and that Penn-Cal and Mr. Simonton are subject to the Commission's jurisdiction.
4. Penn-Cal and Mr. Simonton received notice of the violations alleged in Section II ("Allegations") on or about June 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Penn-Cal and Mr. Simonton of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Two Thousand Three Hundred Twenty Dollars (\$2,320) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Penn-Cal and Mr. Simonton have paid One Thousand Eight Hundred Fifty-Six Dollars (\$1,856) of the administrative penalty and Four Hundred Sixty-Four Dollars (\$464) is deferred contingent upon Penn-Cal and Mr. Simonton'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 Penn-Cal and Mr. Simonton fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Penn-Cal and Mr. Simonton 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 Penn-Cal and Mr. Simonton 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 April 2, 2007, Penn-Cal and Mr. Simonton began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").
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 Penn-Cal and Mr. Simonton have 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 of the Facility, Penn-Cal and Mr. Simonton are alleged to have failed to develop and operate under a CNMP certified by the Texas State Soil and Water Conservation Board ("TSSWCB"), in violation of 30 TEX. ADMIN. CODE § 321.42(s), as documented during a record review conducted on June 1, 2007. Specifically, a CNMP was submitted for review, but Penn-Cal and Mr. Simonton failed to respond to requests for additional information from the TSSWCB and the TCEQ by February 5, 2007.

## **III. DENIALS**

Penn-Cal and Mr. Simonton generally deny each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Penn-Cal and Mr. Simonton pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Penn-Cal and Mr. Simonton'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: Penn-Cal, L.L.C. and Glen Simonton dba Kuiper Dairy, Docket No. 2007-1057-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. Penn-Cal and Mr. Simonton 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. The provisions of this Agreed Order shall apply to and be binding upon Penn-Cal and Mr. Simonton. Penn-Cal and Mr. Simonton 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.
4. This Agreed Order, issued by the Commission, shall not be admissible against Penn-Cal and Mr. Simonton 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.
5. 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.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Penn-Cal and Mr. Simonton, or three days after the date on which the Commission mails notice of the Order to Penn-Cal and Mr. Simonton, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.





SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*John S. Oliver*  
For the Executive Director

11/13/07  
Date

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

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

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

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

*Clark Simonton Jr*  
Signature

8-31-07  
Date

Clark Simonton Jr  
Name (Printed or typed)  
Authorized Representative of  
Penn-Cal, L.L.C.

as attorney-in-fact for Penn-Cal LLC.  
Title

*Clark Simonton Jr*  
Signature

8-31-07  
Date

Clark Simonton Jr  
Name (Printed or typed)  
Authorized Representative of  
Glen Simonton dba Kuiper Dairy

as attorney-in-fact for Glen Simonton  
dba Kuiper Dairy  
Title

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

