

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1213-AGR-E **TCEQ ID:** RN104925334 **CASE NO.:** 34329

RESPONDENT NAME: Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input 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>SITE WHERE VIOLATION(S) OCCURRED: Optimum Calves, located 4.5 miles west of Farm-to-Market Road 1731 on Farm-to-Market Road 3125 (West Camp Road), Bailey County</p> <p>TYPE OF OPERATION: Dairy calf operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: An anonymous complaint was received on May 9, 2007 regarding an alleged unauthorized discharge from the facility. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received but the complainants have not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Water Enforcement Section, MC 169; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Roger Gomez, Owner, Optimum Calves, L.L.C., 250 Farm-to-Market Road 3125, Muleshoe, Texas 79347 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: May 9, 2007</p> <p>Date of Investigation Relating to this Case: May 9, 2007</p> <p>Date of NOV/NOE Relating to this Case: June 25, 2007 (NOE)</p> <p>Background Facts: The TCEQ conducted an investigation at the facility in response to a complaint. Two violations were documented.</p> <p>WATER</p> <p>1) Failure to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation ("CAFO") [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 321.31(a)].</p> <p>2) Failure to develop a pollution prevention plan ("PPP") for the Facility [30 TEX. ADMIN. CODE § 321.46(a)(1) and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920817, Part III.A.1(a)].</p>	<p>Total Assessed: \$2,440</p> <p>Total Deferred: \$488 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,952</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:</p> <p>a) On May 9, 2007, the Respondents repaired the broken berms located on the south and east sides of the Facility; and</p> <p>b) On or before August 30, 2007, the Respondents removed and properly disposed of the debris and sediment deposited along the borrow ditches.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, develop and maintain a PPP for the Facility, in accordance with TPDES CAFO General Permit No. TXG920817, Part III, Pollution Prevention Plan Requirements;</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.f. below;</p> <p>c) Within 180 days after the effective date of this Agreed Order, construct a retention control structure ("RCS") to retain process generated wastewater and contaminated runoff from the Facility. The design and construction shall be in accordance with the current technical standards developed by the Natural Resources Conservation Service, American Society of Agricultural Engineers, American Society of Civil Engineers, or American Society of Testing Materials;</p> <p>d) Within 210 days after the effective date of this Agreed Order, obtain certification signed and sealed by a licensed Texas professional engineer, demonstrating that the design, liner, and capacity of the RCS meet the technical standards as described in Ordering Provision No. 2.c. above;</p>

		<p>e) Within 225 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.c. and 2.d., as described in Ordering Provision No. 2.f. below; and</p> <p>f) The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.e.</p>
--	--	---

Additional ID No(s): TXG920817



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	2-Jul-2007	Screening	26-Jul-2007	EPA Due	
	PCW	26-Jul-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves		
Reg. Ent. Ref. No.	RN104925334		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34329	No. of Violations	2
Docket No.	2007-1213-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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes: The penalty is enhanced due to one NOV with violations unrelated to those cited in this action and one agreed final enforcement order containing a denial of liability.

Culpability Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Reduction Subtotal 5

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

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

Total EB Amounts Subtotal 6
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

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 Reduction Adjustment

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 26-Jul-2007

Docket No. 2007-1213-AGR-E

PCW

Respondent Optimum Calves, L.L.C. and Roger Gomez dba Optimur

Policy Revision 2 (September 2002)

Case ID No. 34329

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104925334

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)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

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) 22%

>> 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 unrelated to those cited in this action and one agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 26-Jul-2007	Docket No. 2007-1213-AGR-E	PCW		
Respondent Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 34329		<i>PCW Revision June 26, 2007</i>		
Reg. Ent. Reference No. RN104925334				
Media [Statute] Water Quality				
Enf. Coordinator Lynley Doyen				
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code § 321.31(a)"/>			
Violation Description	<input 1028."="" 44="" along="" and="" berms="" borrow="" cafo").="" contaminated="" county="" ditches="" east="" facility="" failed,="" had="" into="" investigator="" located="" observed="" of="" on="" releasing="" roads="" runoff="" side="" south="" specifically,="" that="" the="" type="text" value="Failed to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation (" wastewater=""/>			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	x
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			Percent <input type="text" value="10%"/>	
>> Programmatic Matrix				
			Percent <input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants that did not exceed protective levels as a result of the unauthorized discharge."/>			
Adjustment			<input type="text" value="\$9,000"/>	
			<input type="text" value="\$1,000"/>	
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="78"/> Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	monthly	<input type="text"/>		
	quarterly	x		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="One quarterly event is recommended from the investigation date (May 9, 2007) to the screening date (July 26, 2007)."/>				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$1,151"/>		Violation Final Penalty Total <input type="text" value="\$1,220"/>		
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,220"/>	

Economic Benefit Worksheet

Respondent Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves
Case ID No. 34329
Reg. Ent. Reference No. RN104925334
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)				0.0	\$0	\$0	\$0
Engineering/construction	\$12,500	9-May-2007	31-Aug-2008	1.3	\$55	\$1,096	\$1,151
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 repair the berms and to construct a proper retention control structure to retain wastewater from the Facility. Date required is the investigation date. 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

\$12,500

TOTAL

\$1,151

Screening Date 26-Jul-2007	Docket No. 2007-1213-AGR-E	PCW
Respondent Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 34329		<i>PCW Revision June 26, 2007</i>
Reg. Ent. Reference No. RN104925334		
Media [Statute] Water Quality		
Enf. Coordinator Lynley Doyen		
Violation Number	<input type="text" value="2"/>	
Rule Cite(s)	30 Tex. Admin. Code § 321.46(a)(1) and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920817, Part III.A.1(a)	
Violation Description	Failed to develop a pollution prevention plan ("PPP") for the Facility.	
Base Penalty		<input type="text" value="\$10,000"/>

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

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

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
	Percent <input type="text" value="10%"/>				
Matrix Notes	100% of the permit requirement was not met.				
Adjustment					<input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="78"/>	
mark only one with an 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	<input type="text" value="\$1,000"/>
One single event is recommended based on documentation of the violation during the investigation on May 9, 2007.			

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$40"/>	Violation Final Penalty Total <input type="text" value="\$1,220"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,220"/>	

Economic Benefit Worksheet

Respondent: Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves
Case ID No.: 34329
Reg. Ent. Reference No.: RN104925334
Media: 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
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	27-Jul-2006	29-Feb-2008	1.6	\$40	n/a	\$40
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 associated with developing a PPP. Date required is the date the plan should have been developed. 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

\$500

TOTAL

\$40

Compliance History

Customer/Respondent/Owner-Operator: CN603074725 Optimum Calves, L.L.C. Classification: AVERAGE Rating: 3.00
Regulated Entity: RN104925334 OPTIMUM CALVES Classification: AVERAGE Site Rating: 3.00
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920817
Location: 4.5 M W OF FM 1731 ON FM 3125 (WEST CAMP RD), BAILEY CO, TX Rating Date: September 01 06
Repeat Violator: NO
TCEQ Region: REGION 02 - LUBBOCK
Date Compliance History Prepared: July 24, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 24, 2002 to July 24, 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? No
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: 03/05/2007

ADMINORDER 2006-1231-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(a)

Description: Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)
Description: Failure to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation ("CAFO").

- 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.)

N/A

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

Date: 05/05/2006 (462862)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(a)

Description: Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit.

- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603016502 GOMEZ, ROGER Classification: AVERAGE Rating: 3.00
Regulated Entity: RN104925334 OPTIMUM CALVES Classification: AVERAGE Site Rating: 3.00
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920817
Location: 4.5 M W OF FM 1731 ON FM 3125 (WEST CAMP RD), BAILEY CO, TX Rating Date: September 01 06
Repeat Violator: NO
TCEQ Region: REGION 02 - LUBBOCK
Date Compliance History Prepared: July 24, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 24, 2002 to July 24, 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? No
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: 03/05/2007

ADMINORDER 2006-1231-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(a)

Description: Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation ("CAFO").

- 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.)

N/A

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

Date: 05/05/2006 (462862)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(a)

Description: Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit.

- 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
OPTIMUM CALVES, L.L.C. AND
ROGER GOMEZ DBA OPTIMUM
CALVES
RN104925334**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1213-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 Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves ("Optimum Calves and Mr. Gomez") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Optimum Calves and Mr. Gomez appear before the Commission and together stipulate that:

1. Optimum Calves and Mr. Gomez own and operate a dairy calf operation located 4.5 miles west of Farm-to-Market Road 1731 on Farm-to-Market Road 3125 (West Camp Road) in Bailey County, Texas (the "Facility").
2. Optimum Calves and Mr. Gomez have discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Optimum Calves and Mr. Gomez agree that the Commission has jurisdiction to enter this Agreed Order, and that Optimum Calves and Mr. Gomez are subject to the Commission's jurisdiction.
4. Optimum Calves and Mr. Gomez received notice of the violations alleged in Section II ("Allegations") on or about June 30, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Optimum Calves and Mr. Gomez of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Four Hundred Forty Dollars (\$2,440) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Optimum Calves and Mr. Gomez have paid One Thousand Nine Hundred Fifty-Two Dollars (\$1,952) of the administrative penalty and Four Hundred Eighty-Eight Dollars (\$488) is deferred contingent upon Mr. Gomez' and Optimum Calves' 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 Optimum Calves and Mr. Gomez fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Optimum Calves and Mr. Gomez 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 Optimum Calves and Mr. Gomez 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 Optimum Calves and Mr. Gomez implemented the following corrective measures at the Facility:
 - a. On May 9, 2007, repaired the broken berms located on the south and east sides of the Facility; and
 - b. On or before August 30, 2007, removed and properly disposed of the debris and sediment deposited along the borrow ditches.
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 Optimum Calves and Mr. Gomez 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 owners and operators of the Facility, Optimum Calves and Mr. Gomez are alleged to have:

1. Failed to prevent the unauthorized discharge of agricultural wastewater from a concentrated animal feeding operation ("CAFO"), in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 321.31(a), as documented during an investigation conducted on May 9, 2007. Specifically, the investigator observed that the berms located on the east and south side of the Facility had failed, releasing wastewater and contaminated runoff into the borrow ditches along County Roads 44 and 1028.

2. Failed to develop a pollution prevention plan ("PPP") for the Facility, in violation of 30 TEX. ADMIN. CODE § 321.46(a)(1) and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920817, Part III.A.1(a), as documented during an investigation conducted on May 9, 2007.

III. DENIALS

Optimum Calves and Mr. Gomez generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Optimum Calves and Mr. Gomez pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Gomez's and Optimum Calves' 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: Optimum Calves, L.L.C. and Roger Gomez dba Optimum Calves, Docket No. 2007-1213-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. Optimum Calves and Mr. Gomez 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 Optimum Calves and Mr. Gomez shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, develop and maintain a PPP for the Facility, in accordance with TPDES CAFO General Permit No. TXG920817, Part III, Pollution Prevention Plan Requirements;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a., as described in Ordering Provision No. 3.f. below;
 - c. Within 180 days after the effective date of this Agreed Order, construct a retention control structure ("RCS") to retain process generated wastewater and contaminated runoff from the Facility. The design and construction shall be in accordance with the current technical standards developed by the Natural Resources Conservation Service, American Society of

Agricultural Engineers, American Society of Civil Engineers, or American Society of Testing Materials;

- d. Within 210 days after the effective date of this Agreed Order, obtain certification signed and sealed by a licensed Texas professional engineer, demonstrating that the design, liner, and capacity of the RCS meet the technical standards as described in Ordering Provision No. 3.c. above;
- e. Within 225 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 3.c. and 3.d., as described in Ordering Provision No. 3.f. below; and
- f. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.e. 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
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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

J. L. Zedler
For the Executive Director

12/7/07
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.

Roger Dony
Signature

10/12/07
Date

Roger Gomez
Name (Printed or typed)
Authorized Representative of
Roger Gomez dba Optimum Calves

Owner
Title

Roger Dony
Signature

10/12/07
Date

Roger Gomez
Name (Printed or typed)
Authorized Representative of Optimum Calves, L.L.C.

OWNER
Title

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

