

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-1637-AGR-E TCEQ ID: RN101519486 CASE NO.: 20579
RESPONDENT NAME: MID-WEST FEED YARDS, INC.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AGR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1527 North Bell Street, San Angelo, Tom Green County</p> <p>TYPE OF OPERATION: Animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 24, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Mike Meyer, Waste Enforcement Section, MC 128, (512) 239-4492 TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, R-8, (325) 655-9479 Respondent: Mr. Jim Thomas, President, Mid-West Feed Yards, Inc., P.O. Box 1370, San Angelo, Texas 76902-1370 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: February 24, 2004 and April 21, 2004</p> <p>Date of NOE Relating to this Case: June 30, 2004</p> <p>Background Facts:</p> <p>The EDPRP was filed on September 28, 2005. The Respondent received notice of the EDPRP on October 4, 2005, as evidenced by the signature on the "green card." The Respondent requested a Financial Inability to Pay ("FIP") review, and on September 1, 2006, was informed that, based on the information provided, the TCEQ Financial Administration Division had determined that the Respondent was able to pay the full amount of the assessed penalty. The Executive Director mailed a proposed Agreed Order to the Respondent, which was received by the Respondent on September 17, 2006, as evidenced by the signature on the "green card." Subsequent to the denial of the FIP request, the Respondent ceased all communication with TCEQ. The Respondent failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent's stormwater permit expired on July 27, 2004. Respondent is now classified as an Animal Feeding Operation (AFO) because the number of animals is less than 10,000 sheep, and therefore no longer requires a General Permit or registration.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AGR:</p> <p>1. Failed to prevent the discharge of waste contaminated stormwater into or adjacent to</p>	<p>Total Assessed: \$24,675</p> <p>Total Due to General Revenue: \$24,675</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease unauthorized discharges from the Facility. 2. Within 15 days, submit written certification demonstrating compliance. 3. Within 30 days, <ol style="list-style-type: none"> a. Provide a permanent pond marker device in the retention control structure; b. Begin containing manure stockpiles to prevent contaminated runoff; c. Construct and maintain perimeter control structures and devices to contain contaminated runoff from open lots and associated areas; d. Ensure adequate equipment is available and maintained in good working order to remove such waste and water as required to maintain the retention capacity; e. Analyze at least one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium, and maintain records of these analyses on-site for a minimum of five years from the date the record is created; and f. Begin maintaining records to demonstrate compliance with the requirements of 30 TEX. ADMIN. CODE § 321.47; 4. Within 45 days, submit written certification demonstrating compliance with 3.a. through 3.f., above. 5. Within 60 days, have a NRCS engineer, licensed professional engineer, or licensed professional geoscientist evaluate the pond liner and submit written certification that the pond liner is in compliance with 30 TEX. ADMIN. CODE § 321.47(d) and 321.47(j). 6. Within 75 days, submit written certification demonstrating compliance with No. 5 above.

waters in the State [TEX. WATER CODE § 26.121(a)(1) and Water Quality Permit No. 01870 ("the Permit"), Section V Conditions].

2. Failed to adequately stockpile manure waste stored on-site to prevent contaminated stormwater runoff; failed to adequately maintain the Facility's earthen berms to prevent ponding and puddling of the retention control structure ("RCS"); failed to maintain the perimeter control structures and devices; failed to adequately maintain and operate the required RCS wastewater disposal mechanism; failed to provide a permanent marker in the RCS; and failed to fully comply with the current regulations and specific technical requirements when operating an animal feeding operation [30 TEX. ADMIN. CODE §§ 321.38(h), 321.47(d)(2), 321.36(c), 321.36(h)(2), 321.47(e)(6), and 321.43(j)(2)(B), and Section VI, Special Provisions, paragraphs 1, 2, and 4 of the Permit].

3. Failed to provide the required compaction and construction engineering certification on the modifications to the RCS embankments; failed to submit the required liner certification as proof of no significant hydrologic connection; and failed to have the RCS recertified by a NRCS or licensed professional engineer within 30 days after the two most recent pond cleaning events conducted on December 30, 2000 and April 19, 2003 [30 TEX. ADMIN. CODE §§ 321.38(g)(1), (g)(3), and (g)(3)(E), and 321.39(b)(5), and Section VI, Special Provisions, Paragraph 4 of the Permit].

4. Failed to remove or properly dispose of dead animals [30 TEX. ADMIN. CODE § 321.36(1), and Section VI, Special Provisions, Paragraph 2 of the Permit].

5. Failed to provide written notification to the TCEQ within 14 working days of the February 24, 2004, discharge from the RCS or any component of the waste handling or land application system [30 TEX. ADMIN. CODE § 321.44(a), and Section V, Standard Provisions, Subparagraph (b) of the Permit].

6. Failed to perform annual nutrient analysis for at least one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium for the calendar years of 2001, 2002, 2003, and failed to maintain the results on-site [30 TEX. ADMIN. CODE §§ 321.46(d)(9) and 321.36(e)(1)].



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 17, 2004

DATES

PCW Screening Priority Due EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent
 Reg. Ent. Ref. No.
 Additional ID No(s).
 Facility/Site Region Major/Minor Source

CASE INFORMATION

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

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply 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"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit Subtotal 6

Total EB Amounts	<input type="text" value="\$1,599"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$8,050"/>	

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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

West-revised May 2007.qpw

Screening Date 06-Oct-2004

Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Site Address 1527 North Bell Street, San Angelo, Tom Green County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (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 (<i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

There was a previous NOV for same or similar violations dated 12/18/2000.

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

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Screening Date 06-Oct-2004

Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

West revised May 2007.gpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
 Case ID No. 20579
 Reg. Ent. Reference No. RN101519486
 Additional ID No(s). Water Quality Permit No. 01870
 Media [Statute] Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: See Economic Benefit for Violation No. 2.

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

Notes for AVOIDED costs:

Approx. Cost of Compliance TOTAL

West-revised May 2007.qpw

Screening Date 06-Oct-2004 Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

2

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

30 Tex. Admin. Code §§ 321.38(h), 321.47(d)(2), 321.36(c), 321.36(h)(2), 321.47(e)(6) and 321.43(j)(2)(B) and Water Quality Permit No. 01870, Section VI. Special Provisions, paragraphs 1, 2 and 4

Violation Description

Failed to: 1) adequately stockpile manure waste stored on-site to prevent contaminated stormwater runoff; 2) adequately maintain the facility's earthen berms to prevent ponding and puddling of wastewater and to provide adequate drainage to the retention control structure (RCS); 3) maintain the perimeter control structures and devices, 4) adequately maintain and operate the required RCS wastewater disposal mechanism; 5) provide a permanent marker in the RCS and 6) fully comply with the current regulations and specific technical requirements when operating an animal feeding operation, as documented during a compliance investigation conducted by the TCEQ San Angelo Regional Office conducted on 4/21/2004.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm				
Release		Major	Moderate	Minor		
OR	Actual				Percent	25%
	Potential	X				

>> Programmatic Matrix

		Major	Moderate	Minor		
	Falsification				Percent	

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 4

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

Violation Base Penalty \$10,000

This is a continuing violation beginning with the 4/21/2004 investigation and continuing to the end of the settlement period (03/11/2005). Four quarterly events are recommended to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$388

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

West-revised May 2007.gpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
 Case ID No. 20579
 Reg. Ent. Reference No. RN101519486
 Additional ID No(s). Water Quality Permit No. 01870
 Media [Statute] Water Quality
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	21-Apr-2004	31-May-2005	1.1	\$18	\$370	\$388
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: This is an estimate of the cost for maintaining the control facilities, including the holding pens and retention control structures to prevent the unauthorized discharge of wastewater into or adjacent to waters in the state. The Date Required is the date of the 4/21/2004 investigation and the Final Date is the projected 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

TOTAL

West-revised May 2007.qpw

Screening Date 06-Oct-2004

Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s)

30 Tex. Admin. Code § 321.38(g)(1) and (3)(E), 321.38(g)(3) and 321.39(b)(5) and Water Quality Permit No. 01870 Section VI., Special Provisions, Paragraph 4

Secondary Rule Cite(s)

Violation Description

Failed to provide the required compaction and construction engineering certification on the modifications to the RCS embankments; submit the required liner certification as proof of no significant hydrologic connection and have the RCS recertified by a Natural Resources Conservation Service (NRCS) or licensed professional engineer within 30 days after the two most recent pond cleaning events, as documented during a compliance investigation conducted by the TCEQ San Angelo Regional Office on 4/21/2004.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Two single events are recommended, one for each of the certifications not submitted as documented by the 4/21/2004 investigation, to make the penalty commensurate with the situation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

West revised May 2007.gpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
Case ID No. 20579
Reg. Ent. Reference No. RN101519486
Additional ID No(s). Water Quality Permit No. 01870
Media [Statute] Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	21-Apr-2004	31-May-2005	1.1	\$111	n/a	\$111

Notes for DELAYED costs This is an estimate of retaining a registered license professional engineer or soil scientist to evaluate, prepare and submit a liner certification for the RSC.

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

Notes for AVOIDED costs

Approx. Cost of Compliance **\$2,000**

TOTAL **\$111**

West-revised May 2007.qpw

Screening Date 06-Oct-2004 Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s) Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s)

30 Tex. Admin. Code § 321.36(1) and Water Quality Permit No. 01870, Section VI. Special Provisions, Paragraph 2.

Secondary Rule Cite(s)

Violation Description

Failed to remove and/or properly dispose of dead animals from the site. A dead sheep was observed in one of the middle lower west corral pens. The carcass was mostly decomposed with the only remains being a woolly hide covering the bones, as documented during an incident investigation conducted by the TCEQ San Angelo Regional Office on 2/24/2004.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

A single event is recommended as documented by an investigation conducted on 2/24/2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

West revised May 2007.gpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
Case ID No. 20579
Reg. Ent. Reference No. RN101519486
Additional ID No(s). Water Quality Permit No. 01870
Media [Statute] Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal	\$500	24-Feb-2004	24-Feb-2004	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

This is an estimate of the cost to remove and dispose of the dead animal. The Date Required is the date of the 2/24/2004 regional investigation and the Final Date is the date that the Respondent notified the TCEQ Abilene Regional Office that the carcass had been removed.

Approx. Cost of Compliance

TOTAL

Screening Date 06-Oct-2004

Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

30 Tex. Admin. Code § 321.44(a) and Water Quality Permit No. 01870, Section V. Conditions of the Permit, Standard Provisions, subparagraph (b)

Failed to provide notification, to the TCEQ, in writing within 14 working days of the 2/24/2004 discharge from the retention control structure or any component of the waste handling or land application system, in this case by 3/09/2004, as documented during a compliance investigation conducted by the TCEQ San Angelo Regional Office on 4/21/2004.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text" value="5%"/>

Matrix Notes

50 percent of the rule requirement was not met. Verbal notification was not required because an inspector had visited the site on 2/24/2004 in response to a complaint.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

A single event is recommended as documented by the 4/21/2004 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

West revised May 2007 qpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
 Case ID No. 20579
 Reg. Ent. Reference No. RN101519486
 Additional ID No(s). Water Quality Permit No. 01870
 Media [Statute] Water Quality
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item	Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$50	15-Mar-2004	15-Mar-2004	0.0	\$0	\$50	\$50
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

This is an estimate of the cost of providing written notification to the TCEQ. The Date Required and the Final Date are the date that written response was due to the TCEQ.

Approx. Cost of Compliance

TOTAL

West-revised May 2007.qpw

Screening Date 06-Oct-2004

Docket No. 2004-1637-AGR-E

PCW

Respondent Mid-West Feed Yards, Inc.

Policy Revision 2 (September 2002)

Case ID No. 20579

PCW Revision May 17, 2004

Reg. Ent. Reference No. RN101519486

Additional ID No(s). Water Quality Permit No. 01870

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

West revised May 2007 qpw

Economic Benefit Worksheet

Respondent Mid-West Feed Yards, Inc.
 Case ID No. 20579
 Reg. Ent. Reference No. RN101519486
 Additional ID No(s). Water Quality Permit No. 01870
 Media [Statute] Water Quality
 Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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	\$500	31-Dec-2001	31-Dec-2003	2.0	\$50	\$1,000	\$1,050
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

This is an estimate of conducting the sample, performing the analysis and maintaining the results on-site. The Date Required is the end of the first year wherein the annual nutrient analysis was required. The Final Date is the end of 2003 wherein no nutrient analysis had been performed.

Approx. Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN600794564 Mid-West Feed Yards, Inc.	Classification: AVERAGE	Rating: 4.500
Regulated Entity:	RN101519486 MID WEST CATTLE FEEDLOT	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	WASTEWATER AGRICULTURE PERMIT		WQ0001870000
Location:	1527 N BELL ST, SAN ANGELO, TX, 76903	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	December 29, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 29, 1999 to November 29, 2004		

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

Name: Michael Meyer Phone: (512) 239-4492

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 12/18/2000 (38420)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/18/2000 (340635)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: OP IA

Description: Failure to operate and maintain the retention control structure (RCS) as required in the current authorization.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: OP IA

Description: Failure to operate in accordance with the conditions of the current state authorization.

Self Report? NO

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: OP IA

Description: Failure to remove and adequately dispose of all solid waste materials generated on site as required in the current authorization.

Self Report? NO

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: OP IA

Description: Failure to adequately maintain the facilities retention control structure and wastewater runoff control facilities on site to prevent the potential of a discharge to any water of the state.

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
MID-WEST FEED YARDS, INC.;
RN101519486**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2004-1637-AGR-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Mid-West Feed Yards, Inc. ("Mid-West").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mid-West owns and operates an animal feeding operation located at 1527 North Bell Street, San Angelo, Tom Green County, Texas (the "Facility").
2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation conducted on February 24, 2004, a TCEQ San Angelo Regional Office investigator documented that Mid-West failed to prevent the discharge of waste contaminated stormwater into or adjacent to waters in the State.
4. During an inspection conducted on April 21, 2004, a TCEQ San Angelo Regional Office investigator documented that Mid-West:
 - a. Failed to adequately stockpile manure waste stored on-site to prevent contaminated stormwater runoff; failed to adequately maintain the Facility's earthen berms to prevent ponding and puddling of wastewater and to provide adequate drainage to the retention control structure (RCS); failed to maintain the perimeter control structures and devices; failed to adequately maintain and operate the required RCS wastewater disposal mechanism; failed to provide a permanent marker in the RCS; and failed to

fully comply with the current regulations and specific technical requirements when operating an animal feeding operation;

- b. Failed to provide the required compaction and construction engineering certification on the modifications to the RCS embankments; failed to submit the required liner certification as proof of no significant hydrologic connection; and failed to have the RCS recertified by a Natural Resources Conservation Service (NRCS) or licensed professional engineer within 30 days after the two most recent pond cleaning events conducted on December 30, 2000, and April 19, 2003;
 - c. Failed to remove or properly dispose of dead animals from the site;
 - d. Failed to provide written notification to the TCEQ within 14 working days of the February 24, 2004, discharge from the RCS or any component of the waste handling or land application system; and
 - e. Failed to perform annual nutrient analysis for at least one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium for the calendar years of 2001, 2002, and 2003, and failed to maintain the results on-site at the Facility.
5. Mid-West received notice of the violations on or about June 30, 2004.
 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mid-West Feed Yards, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on September 28, 2005.
 7. By letter dated September 28, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mid-West with notice of the EDPRP. According to the return receipt "green card," Mid-West received notice of the EDPRP on October 4, 2005, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since Mid-West received notice of the EDPRP, provided by the Executive Director. Mid-West failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mid-West is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Mid-West failed to prevent the discharge of waste contaminated stormwater into or adjacent to waters in the State, in violation of TEX. WATER CODE § 26.121(a)(1) and Water Quality Permit No. 01870 (“the Permit”), Section V Conditions.
3. As evidenced by Finding of Fact No. 4.a., Mid-West failed to adequately stockpile manure waste stored on-site to prevent contaminated stormwater runoff; failed to adequately maintain the Facility’s earthen berms to prevent ponding and puddling of wastewater and to provide adequate drainage to the RCS; failed to maintain the perimeter control structures and devices; failed to adequately maintain and operate the required RCS wastewater disposal mechanism; failed to provide a permanent marker in the RCS; and failed to fully comply with the current regulations and specific technical requirements when operating an animal feeding operation, in violation of 30 TEX. ADMIN. CODE §§ 321.38(h), 321.47(d)(2), 321.36(c), 321.36(h)(2), 321.47(e)(6), and 321.43(j)(2)(B), and Section VI, Special Provisions, paragraphs 1, 2 and 4 of the Permit.
4. As evidenced by Finding of Fact No. 4.b., Mid-West failed to provide the required compaction and construction engineering certification on the modifications to the RCS embankments; failed to submit the required liner certification as proof of no significant hydrologic connection; and failed to have the RCS recertified by a NRCS or licensed professional engineer within 30 days after the two most recent pond cleaning events conducted on December 30, 2000 and April 19, 2003, in violation of 30 TEX. ADMIN. CODE §§ 321.38(g)(1), (g)(3), and (g)(3)(E), and 321.39(b)(5), and Section VI, Special Provisions, Paragraph 4 of the Permit.
5. As evidenced by Finding of Fact No. 4.c., Mid-West failed to remove or properly dispose of dead animals from the site, in violation of 30 TEX. ADMIN. CODE § 321.36(1), and Section VI, Special Provisions, Paragraph 2 of the Permit.
6. As evidenced by Finding of Fact No. 4.d., Mid-West failed to provide written notification to the TCEQ within 14 working days of the February 24, 2004, discharge from the RCS or any component of the waste handling or land application system, in violation of 30 TEX. ADMIN. CODE § 321.44(a), and Section V Conditions, Standard Provisions, Subparagraph (b) of the Permit.
7. As evidenced by Finding of Fact No. 4.e., Mid-West failed to perform annual nutrient analysis for at least one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium for the calendar years of 2001, 2002, and 2003, and failed to maintain the results on-site at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 321.46(d)(9) and 321.36(e)(1).

8. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mid-West with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
9. As evidenced by Finding of Fact No. 8, Mid-West failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mid-West and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mid-West for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of twenty-four thousand six hundred seventy-five dollars (\$24,675.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mid-West is assessed an administrative penalty in the amount of twenty-four thousand six hundred seventy-five dollars (\$24,675.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mid-West's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Mid-West Feed Yards, Inc.; Docket No. 2004-1637-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. Mid-West shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Mid-West shall cease unauthorized discharges from the Facility.
 - b. Within 15 days after the effective date of this Order, Mid-West shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with ordering provision No. 2.a.. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mid-West shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. 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:

Mark Newman, Water Section Manager
San Angelo Regional Office
622 S. Oakes, Ste. K
San Angelo, Texas 76903-7035

- c. Within 30 days after the effective date of this Order, Mid-West shall:
 - i. Provide a permanent pond marker device in the RCS, as required by 30 TEX. ADMIN. CODE § 321.47(e)(6);
 - ii. Begin containing manure stockpiles to prevent contaminated runoff from the Facility, as required by 30 TEX. ADMIN. CODE § 321.47(f)(13);
 - iii. Construct and maintain perimeter control structures and devices to contain contaminated runoff from open lots and associated areas, in accordance with 30 TEX. ADMIN. CODE § 321.47(d)(1);
 - iv. Begin maintaining the Facility's earthen pens to prevent ponding and puddling and provide adequate drainage to the RCS, as required by 30 TEX. ADMIN. CODE § 321.47(d)(2);
 - v. Ensure adequate equipment is available and maintained in good working order to remove such waste and water as required to maintain the retention capacity of the Facility in compliance with this subchapter, as required by 30 TEX. ADMIN. CODE § 321.47(e)(4);
 - vi. Analyze at least one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium, and maintain records of these analyses on-site for a minimum of five years from the date the record is created, as required by 30 TEX. ADMIN. CODE §§ 321.36.(e)(1), 321.46(d)(9), 321.47(f)(11), and 321.47(i)(1)(E); and
 - vii. Begin maintaining records to demonstrate compliance with the requirements of 30 TEX. ADMIN. CODE § 321.47 (related to Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated as CAFOs).
 - d. Within 45 days after the effective date of this order, Mid-West shall demonstrate compliance with Ordering Provisions Nos. 2.c.i. through c.vii. by submitting written certification pursuant to Ordering Provision No. 2.b., above.
 - e. Within 60 days after the effective date of this order, Mid-West shall have a NRCS engineer, licensed professional engineer, or licensed professional geoscientist evaluate the pond liner and submit written certification that the pond liner at the Facility is in compliance with 30 TEX. ADMIN. CODE § 321.47(d) and 321.47(j).
 - f. Within 75 days after the effective date of this order, Mid-West shall demonstrate compliance with Ordering Provisions No. 2.e. by submitting written certification pursuant to Ordering Provision No. 2.b., above.
3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mid-West. Mid-West is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mid-West fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mid-West's failure to comply is not a violation of this Order. Mid-West shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mid-West shall notify the Executive Director within seven days after Mid-West becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mid-West shall be made in writing to the Executive Director. Extensions are not effective until Mid-West receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mid-West if the Executive Director determines that Mid-West has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Mid-West Feed Yards, Inc.
Docket No. 2004-1637-AGR-E
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mid-West Feed Yards, Inc.” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 28, 2005.

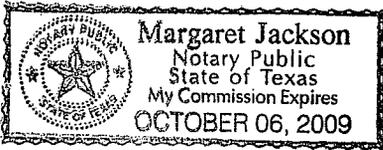
The EDPRP was mailed to Mid-West at its last known address on September 28, 2005, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mid-West received notice of the EDPRP on October 4, 2005, as evidenced by the signature on the card.

More than 20 days have elapsed since Mid-West received notice of the EDPRP. Mid-West failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 25 day of June, A.D., 2007.



Notary Signature