EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2004-2023-MLM-E TCEQ ID: RN104393855 CASE NO.: 22465
RESPONDENT NAME: WHB CATTLE, L.P.

ORDER TYPE:		
_X_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	_X_MULTI-MEDIA (check all that apply)	_X_INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
_X_WATER QUALITY	_X_SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 17095 Farm-to-Market Road 3004, near Follett, Lipscomb County

TYPE OF OPERATION: Concentrated animal feeding operation

SMALL BUSINESS: _X_ Yes ____ No

OTHER SIGNIFICANT MATTERS: The complaint alleged a discharge of agricultural wastewater and the burying of dead cattle at the Respondent's facility. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter. One complaint was received, but the complainant has not expressed a desire to protest this matter or speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 26, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Waste Enforcement Section, MC 169, (512) 239-1364
TCEQ Regional Contact: Mr. Eddy Vance, Amarillo Regional Office, MC R-1, (806) 468-0510
Respondent: Mr. Drew M. Braum, Vice President, WHB Cattle, L.P., P.O. Box 25429, Oklahoma City, Oklahoma 73125
Respondent's Attorney: Mr. Robert L. Roark, Cheek & Falcone, PLLC, 6301 Waterford Blvd., Suite 320, Oklahoma City, Oklahoma 73118

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date of Complaints Relating to this Case:** September 10, 2004 **Date of Investigation Relating to this Case:** September 13, 2004 **Date of NOE Relating to this Case:** October 25, 2004 **Background Facts:** After protracted negotiations, an agreement was reached on March 25, 2008 and a signed Agreed Order was received on March 28, 2008. The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report. **MLM:** 1. Failed to obtain authorization under a water quality general permit or individual permit for a concentrated animal feeding operation ("CAFO") [30 TEX. ADMIN. CODE § 321.33(a)]. 2. Failed to deed record the location and notify the TCEQ prior to the disposal of dead animals [30 TEX. ADMIN. CODE § 335.5(a) and (b)]. 3. Failed to obtain authorizations to construct prior to the construction and operation of four on-site sewage facilities [30 TEX. ADMIN. CODE § 285.3(b)(1) and TEX. HEALTH & SAFETY CODE § 366.051(a)].	**Total Assessed:** $5,000 **Total Deferred:** $0 **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $5,000 The Respondent has paid the administrative penalty in full. **Site Compliance History Classification:** __ High _X_ Average __ Poor **Person Compliance History Classification:** __ High _X_ Average __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Respondent has implemented the following corrective measures at the Facility: 1. On February 7, 2005, submitted to the TCEQ proof of deed recordation of the burial sites of the dead animals. 2. On April 25, 2005, obtained authorization from the TCEQ to operate all four on-site sewage facilities. **Ordering Provisions:** The Respondent shall undertake the following technical requirements: 1. Within 30 days, submit an administratively complete CAFO permit application to TCEQ. 2. Within 45 days, submit written certification demonstrating compliance with Ordering Provision No. 1. 3. Within 180 days, submit written certification that: a. Authorization to operate a concentrated animal feeding operation has been obtained; b. The number of mature dairy cattle has been reduced to less than 700; or c. That the operation has ceased until appropriate authorization is obtained. 4. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision May 25, 2007*

TCEQ

DATES					
Assigned	9-Nov-2004				
PCW	1-Jun-2007	Screening	3-Dec-2004	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	W.H. Braum, Inc,		
Reg. Ent. Ref. No.	RN104393855		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	22465	No. of Violations	2
Docket No.	2004-2023-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media	Industrial and Hazardous Waste	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* $4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No change in penalty amount due to no previous compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

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

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$1,863
Approx. Cost of Compliance	$10,250

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $4,000

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

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

Notes:

Final Penalty Amount $4,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $4,000

DEFERRAL — 0% Reduction — *Adjustment* $0

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

Notes: Deferral not offered for non-expedited settlement

PAYABLE PENALTY $4,000

Screening Date 3-Dec-2004 **Docket No.** 2004-2023-MLM-E **PCW**

Respondent W.H. Braum, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 22465 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN104393855

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

>> 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

No change in penalty amount due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 3-Dec-2004 **Docket No.** 2004-2023-MLM-E **PCW**

Respondent W.H. Braum, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 22465 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN104393855

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.33(a)

Violation Description Failed to obtain authorization under a water quality general permit or individual permit for a concentrated animal feeding operation ("CAFO"). Specifically, during the investigation, it was determined that the Facility meets the definition of a large CAFO.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3 | 81 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended based on the investigation date (September 13, 2004) through the screening date (December 3, 2004).

Economic Benefit (EB) for this violation

Estimated EB Amount $1,858

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent W.H. Braum, Inc.
Case ID No. 22465
Reg. Ent. Reference No. RN104393855
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				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	$10,000	13-Sep-2004	31-May-2008	3.7	$1,858	n/a	$1,858
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to prepare a permit application. 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: $10,000

TOTAL: $1,858

Screening Date 3-Dec-2004 **Docket No.** 2004-2023-MLM-E **PCW**

Respondent W.H. Braum, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 22465 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN104393855

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 335.5(a) and (b)

Violation Description Failed to deed record the location and notify the TCEQ prior to the disposal of dead animals.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 81 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the September 13, 2004 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $5

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent W.H. Braum, Inc.
Case ID No. 22465
Reg. Ent. Reference No. RN104393855
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System	$250	13-Sep-2004	7-Feb-2005	0.4	$5	n/a	$5
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 deed record and notify the TCEQ of carcass burial. Date required is the investigation date. Final date is the date proof of deed recordation was submitted to the TCEQ.

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 $250

TOTAL $5

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision May 25, 2007*

DATES					
Assigned	9-Nov-2004				
PCW	1-Jun-2007	Screening	3-Dec-2004	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	W.H. Braum, Inc.		
Reg. Ent. Ref. No.	RN104393855		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	22465	No. of Violations	1
Docket No.	2004-2023-MLM-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No change in penalty amount due to no previous compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

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

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$31
Approx. Cost of Compliance	$1,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,000

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

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

Notes:

Final Penalty Amount $1,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,000

DEFERRAL — 0% Reduction — *Adjustment* $0

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

Notes: Deferral not offered for non-expedited settlement

PAYABLE PENALTY $1,000

Screening Date 3-Dec-2004 **Docket No.** 2004-2023-MLM-E **PCW**

Respondent W.H. Braum, Inc.

Policy Revision 2 (September 2002)

Case ID No. 22465

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104393855

Media [Statute] On-Site Sewage Disposal

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

>> **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

No change in penalty amount due to no previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 3-Dec-2004 **Docket No.** 2004-2023-MLM-E **PCW**

Respondent W.H. Braum, Inc.

Policy Revision 2 (September 2002)

Case ID No. 22465

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN104393855

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 285.3(b)(1) and Tex. Health & Safety Code § 366.051(a)

Violation Description Failed to obtain authorizations to construct prior to the construction and operation of four on-site sewage facilities ("OSSF").

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $2,250

$250

Violation Events

Number of Violation Events 4

81 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

Four single events (one event for each OSSF) are recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $31

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent W.H. Braum, Inc.
Case ID No. 22465
Reg. Ent. Reference No. RN104393855
Media On-Site Sewage Disposal
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$1,000	13-Sep-2004	25-Apr-2005	0.6	$31	n/a	$31
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain authorizations to construct for the OSSFs. Date required is the investigation date. Final date is the TCEQ Notice of Approval date for all four OSSFs.

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: $1,000

TOTAL: $31

Compliance History

Customer/Respondent/Owner-Operator:	CN602699860	WH BRAUM INC	Classification: AVERAGE	Rating: 3.010
Regulated Entity:	RN104393855	WH BRAUM FOLLET FARM	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	17095 FM 3004, FOLLETT, TX, 79034		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 01 - AMARILLO			
Date Compliance History Prepared:	November 30, 2004			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 30, 1999 to November 30, 2004			

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

Name: Ronnie Kramer Phone: (806) 468-0512

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A
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.)

N/A

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

N/A

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 WHB CATTLE, L.P. RN104393855	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2004-2023-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WHB Cattle, L.P., successor in interest to W.H. Braum, Inc. ("WHB") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 366. The Executive Director of the TCEQ, represented by the Litigation Division, and WHB, represented by Kenneth N. McKinney, of the law firm of Tomlinson & O'Connell. P.C. and Robert L. Roark, of the law firm of Cheek & Falcone, PLLC, appear before the Commission and together stipulate that:

1. WHB owns and operates a concentrated animal feeding operation located at 17095 Farm-to-Market Road 3004, near Follett, Lipscomb County, Texas (the "Facility").

2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 366 and TCEQ rules.

3. The Commission and WHB agree that the Commission has jurisdiction to enter this Agreed Order, and that WHB is subject to the Commission's jurisdiction.

4. WHB received notice of the violations alleged in Section II ("Allegations") on or about October 30, 2004.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by WHB of any of the Allegations, nor of any statute or rule.

6. An administrative penalty in the amount of five thousand dollars ($5,000.00) is assessed by the Commission in settlement of the Allegations. WHB has paid five thousand dollars ($5,000.00) of the administrative 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 WHB 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 WHB has implemented the following corrective measures at the Facility:

   a. On February 7, 2005, submitted to the TCEQ proof of deed recordation of the burial sites of the dead animals; and

   b. On April 25, 2005, obtained authorization from the TCEQ to operate all four on-site sewage facilities ("OSSF").

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 WHB has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

WHB is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 321.33(a) by failing to obtain authorization under a water quality general permit or individual permit for a concentrated animal feeding operation ("CAFO"), as documented on September 13, 2004;

2. 30 TEX. ADMIN. CODE § 335.5(a) and (b) by failing to deed record the location and notify the TCEQ prior to the disposal of dead animals, as documented on September 13, 2004; and

3. 30 TEX. ADMIN. CODE § 285.3(b)(1) and TEX. HEALTH & SAFETY CODE § 366.051(a) by failing to obtain authorizations to construct prior to the construction and operation of four on-site sewage facilities, as documented on September 13, 2004.

III. DENIALS

WHB specifically denies each of the Allegations and any violation of any other applicable statute or rule.

IV. ORDER

1. In compromise and settlement of the Allegations, it is therefore ordered by the TCEQ that WHB pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and WHB's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "re: WHB Cattle, L.P., Docket No. 2004-2023-MLM-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. WHB shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application pursuant to 30 TEX. ADMIN. CODE § 321.34 to:

      Agriculture Core, Wastewater Permitting Section
      Water Quality Division, MC 148
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

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

c. 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.e. below; and

d. Within 180 days after the effective date of this Agreed Order, submit written certification that: (i) authorization to operate a concentrated animal feeding operation has been obtained; (ii) that the number of mature dairy cattle has been reduced to less than 700 and that the Facility is operating in accordance with 30 Tex. Admin. Code § 321.47; or (iii) that operation has ceased until appropriate authorization is obtained, as described in Ordering Provision No. 2.e. below; and

e. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.d. The certification shall be notarized by a State of Texas or State of Oklahoma 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
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon WHB. WHB is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If WHB fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, WHB's failure to comply is not a violation of this Agreed Order. WHB shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. WHB shall notify the Executive Director within seven days after WHB becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by WHB shall be made in writing to the Executive Director. Extensions are not effective until WHB receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against WHB in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to WHB, or three days after the date on which the Commission mails notice of the Order to WHB, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

For the Executive Director — Date: 5/19/08

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

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

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

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

Signature — Date: 3-25-08

WHB Cattle, LP
by its General Partner
WHB Land, LLC, by
Drew M. Braum, Vice President