

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0728-AGR-E TCEQ ID: RN103043816 CASE NO.: 35866

RESPONDENT NAME: Jon Stowater and James Pool dba S&P Dairy

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: S&P Dairy, approximately 2.5 miles south of Sulphur Springs and approximately 2.1 miles south of the intersection of State Highway 11 and County Road 2301 on the west side of County Road 2301, Hopkins County</p> <p>TYPE OF OPERATION: Dairy</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 Respondents has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Jon Stowater and Mr. James Pool, Owners, S&P Dairy, 2080 County Road 2301, Sulphur Springs, Texas 75482 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 12, 2008</p> <p>Date of NOV/NOE Relating to this Case: April 23, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation ("CAFO") through an individual water quality permit or a CAFO general permit. Specifically, during the investigation it was determined that the Facility meets the definition of a CAFO due to the number of mature dairy cattle increasing to over 200 and being in the dairy outreach program area which includes Hopkins County [30 TEX. ADMIN. CODE § 321.33(d)].</p> <p>2) Failure to cease application of wastewater to a land management unit ("LMU") when extractable phosphorus levels were greater than 200 parts per million ("ppm") in Zone 1 of a LMU and a nutrient utilization plan ("NUP") had not been developed. Specifically, during the February 12, 2008 investigation, wastewater was being applied to Field Nos. 4 and 6 where levels of phosphorus in the soils were 1,143 ppm in Zone 1 of Field 6 and 675 ppm in Zone 1 of Field 4 according to the Soil Analysis Report for the samples received on November 6, 2007 [30 TEX. ADMIN. CODE § 321.47(h)(1)(A)].</p>	<p>Total Assessed: \$11,445</p> <p>Total Deferred: \$2,289 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$4,578</p> <p>Total Paid to General Revenue: \$4,578</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>The Executive Director recognizes that on May 13, 2008, the Respondents began implementing a nutrient management plan developed by a certified Nutrient Management Specialist to meet the requirements of 30 TEX. ADMIN. CODE § 321.47(h).</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondents to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondents to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, reduce the number of cattle at the Facility to below 200 mature dairy cattle or below the number as defined by 30 TEX. ADMIN. CODE § 321.32(13) for CAFOs and maintain the number of cattle below this number until authorization to operate as a CAFO has been obtained or the operation has ceased; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.</p>

Additional ID No(s): R05AG0018

Attachment A
Docket Number: 2008-0728-AGR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents:	Jon Stowater and James Pool dba S&P Dairy
Payable Penalty Amount:	Nine Thousand One Hundred Fifty-Six Dollars (\$9,156)
SEP Amount:	Four Thousand Five Hundred Seventy-Eight Dollars (\$4,578)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP:	Hopkins County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondents to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondents shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondents must contribute the SEP Amount to the Third-Party Recipient. The Respondents shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondents shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondents shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondents does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondents must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondents shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondents may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondents under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

DATES	Assigned	22-Apr-2008	Screening	8-May-2008	EPA Due
	PCW	30-Apr-2008			

RESPONDENT/FACILITY INFORMATION	
Respondent	Jon Stowater and James Pool dba S&P Dairy
Reg. Ent. Ref. No.	RN103043816
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35866	No. of Violations	2
Docket No.	2008-0728-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	9.0% Enhancement	Subtotals 2, 3, & 7 \$945

Notes: The Respondents received one NOV with same or similar violations and two NOVs without same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply	0.0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)
Notes	The Respondents do not meet the good faith criteria.	

Total EB Amounts	\$1,004	0.0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$13,500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,445
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$11,445

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,445
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,289
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY		\$9,156
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Screening Date 8-May-2008	Docket No. 2008-0728-AGR-E	PCW
Respondent Jon Stowater and James Pool dba S&P Dairy	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35866	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN103043816		
Media [Statute] Water Quality		
Enf. Coordinator Merrilee Hupp		

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	2	4%
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 <i>(number of events)</i>	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 submitted)</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%

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) 9%

>> 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 Respondents received one NOV with same or similar violations and two NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date	8-May-2008	Docket No.	2008-0728-AGR-E	PCW
Respondent	Jon Stowater and James Pool dba S&P Dairy			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35866			<i>PCW Revision April 29, 2008</i>
Reg. Ent. Reference No.	RN103043816			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 321.33(d)
Violation Description	Failed to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation ("CAFO") through an individual water quality permit or a CAFO general permit. Specifically, during the investigation it was determined that the Facility meets the definition of a CAFO due to the number of mature dairy cattle increasing to over 200 and being in the dairy outreach program area which includes Hopkins County.

Base Penalty

>> 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"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Three monthly events are recommended from the investigation date (February 12, 2008) to the screening date (May 8, 2008).

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Jon Stowater and James Pool dba S&P Dairy
Case ID No.: 35866
Reg. Ent. Reference No.: RN103043816
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	Overtime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$12,000	12-Feb-2008	15-Apr-2009	1.17	\$47	\$938	\$985
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to prepare and submit a technically complete permit application. Associated expenses include application fee, site survey, and engineering certifications. Date Required is the investigation date. Final Date is the expected date that authorization will be obtained.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$12,000	TOTAL	\$985
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Screening Date 8-May-2008 **Docket No.** 2008-0728-AGR-E **PCW**
Respondent Jon Stowater and James Pool dba S&P Dairy *Policy Revision 2 (September 2002)*
Case ID No. 35866 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN103043816
Media [Statute] Water Quality
Enf. Coordinator Merrilee Hupp

Violation Number

Rule Cite(s)

Violation Description
 Failed to cease application of wastewater to a land management unit ("LMU") when extractable phosphorus levels were greater than 200 parts per million ("ppm") in Zone 1 of a LMU and a nutrient utilization plan ("NUP") had not been developed. Specifically, during the February 12, 2008 investigation, wastewater was being applied to Field Nos. 4 and 6 where levels of phosphorus in the soils were 1,143 ppm in Zone 1 of Field 6 and 675 ppm in Zone 1 of Field 4 according to the Soil Analysis Report for the samples received on November 6, 2007.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes
 Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Three monthly events are recommended from the investigation date (February 12, 2008) to the date of screening (May 8, 2008).

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Jon Stowater and James Pool dba S&P Dairy
Case ID No. 35866
Reg. Ent. Reference No. RN103043816
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	12-Feb-2008	13-May-2008	0.25	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost for development of a nutrient utilization plan or nutrient management plan for the facility. Date required is the investigation date and final date is date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$19

Compliance History

Customer/Respondent/Owner-Operator: CN601582448 Stowater Jon And Pool James Classification: AVERAGE Rating: 1.88
Regulated Entity: RN103043816 S&P DAIRY Classification: AVERAGE Site Rating: 1.88
ID Number(s): WASTEWATER AGRICULTURE NON -
PERMITTED
ID NUMBER: R05AG0018
Locaton: Approx. 2.5 miles S. of Sulphur Springs and
approx. 2.1 miles S of the intersect. of SH 11 & CR 2301
on W. side of CR 2301, Hopkins Co.

Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: April 30, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 30, 2003 to April 30, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee G. Hupp Phone: 512-239-4490

Site Compliance History Components

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 08/19/2003 (150139)

2 10/07/2003 (247786)

3 08/17/2004 (290579)

4 10/21/2004 (334818)

5 10/11/2005 (432500)

6 03/10/2006 (454312)

7 10/27/2006 (513088)

8 04/18/2008 (618681)

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

Date: 05/08/2003 (34908)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to prevent the unauthorized discharge of wastewater from animal feeding operations adjacent ot waters in the state.

Date: 10/10/2003 (247786)

Self Report? NO Classification: Moderate

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

Description: Failure to apply for a permit prior to any increase in the number of animals authorized for confinement.

Date: 10/17/2005 (432500)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(f)(11)

Description: Failure to collect and analyze at least one irrigation wastewater sample a year.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(g)

Description: Failure to properly collect and analyze representative soil samples from each of the LMUs prior to commencing wastewater irrigation or manure, litter application on land owned, operated, controlled, rented, or leased by the dairy operator.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(i)

Description: Failure to keep operational records on site for a minimum of five years from the date created in accordance with 30 Texas Administrative Code §321.47(i).

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
JON STOWATER AND JAMES POOL
DBA S&P DAIRY
RN103043816**

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§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0728-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 Jon Stowater and James Pool dba S&P Dairy ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a dairy located approximately 2.5 miles south of Sulphur Springs and approximately 2.1 miles south of the intersection of State Highway 11 and County Road 2301 on the west side of County Road 2301 in Hopkins County, Texas (the "Facility").
2. The Respondents have discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about April 28, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eleven Thousand Four Hundred Forty-Five Dollars (\$11,445) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondents have paid Four Thousand Five Hundred Seventy-Eight Dollars (\$4,578) of the administrative penalty and Two Thousand Two Hundred Eighty-Nine Dollars (\$2,289) is deferred contingent upon the Respondents' 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 the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty. Four Thousand Five Hundred Seventy-Eight Dollars (\$4,578) shall be conditionally offset by the Respondents' completion of a Supplemental Environmental Project ("SEP").

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 the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on May 13, 2008, the Respondents began implementing a nutrient management plan developed by a certified Nutrient Management Specialist to meet the requirements of 30 TEX. ADMIN. CODE § 321.47(h).
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 the Respondents 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, the Respondents are alleged to have:

1. Failed to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation ("CAFO") through an individual water quality permit or a CAFO general permit, in violation of 30 TEX. ADMIN. Code § 321.33(d), as documented during an investigation conducted on February 12, 2008. Specifically, during the investigation it was determined that the Facility meets the definition of a CAFO due to the number of mature dairy cattle increasing to over 200 and being in the dairy outreach program area which includes Hopkins County.
2. Failed to cease application of wastewater to a land management unit ("LMU") when extractable phosphorus levels were greater than 200 parts per million ("ppm") in Zone 1 of a LMU and a nutrient utilization plan ("NUP") had not been developed, in violation of 30 TEX. ADMIN. CODE § 321.47(h)(1)(A), as documented during an investigation conducted on February 12, 2008.

Specifically, during the February 12, 2008 investigation, wastewater was being applied to Field Nos. 4 and 6 where levels of phosphorus in the soils were 1,143 ppm in Zone 1 of Field 6 and 675 ppm in Zone 1 of Field 4 according to the Soil Analysis Report for the samples received on November 6, 2007.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: Jon Stowater and James Pool dba S&P Dairy, Docket No. 2008-0728-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. The Respondents shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Four Thousand Five Hundred Seventy-Eight Dollars (\$4,578) of the assessed administrative penalty shall be offset with the condition that the Respondents implement the SEP defined in Attachment A, incorporated herein by reference. The Respondents' obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The Respondents 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.
4. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, reduce the number of cattle at the Facility to below 200 mature dairy cattle or below the number as defined by 30 TEX. ADMIN. CODE § 321.32(13) for CAFOs and maintain the number of cattle below this number until authorization to operate as a CAFO has been obtained or the operation has ceased; and

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 4.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 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

5. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents 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.
6. If the Respondents 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, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
9. 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.
10. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Jon Stowater and James Pool dba S&P Dairy
DOCKET NO. 2008-0728-AGR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sullivan
For the Executive Director

10/10/2008
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.

Jon R. Stowater
Signature

8/7/08
Date

Jon R. Stowater
Name (Printed or typed)

Owner
Title

Authorized Representative of
Jon Stowater dba S&P Dairy

James Pool
Signature

8/7/08
Date

James Pool
Name (Printed or typed)

Owner
Title

Authorized Representative of
James Pool dba S&P Dairy

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

Attachment A
Docket Number: 2008-0728-AGR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents:	Jon Stowater and James Pool dba S&P Dairy
Payable Penalty Amount:	Nine Thousand One Hundred Fifty-Six Dollars (\$9,156)
SEP Amount:	Four Thousand Five Hundred Seventy-Eight Dollars (\$4,578)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up
Location of SEP:	Hopkins County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondents to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondents shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondents must contribute the SEP Amount to the Third-Party Recipient. The Respondents shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondents shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondents shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondents does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to “Texas Commission on Environmental Quality” and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondents must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondents shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondents may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondents under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

