

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2008-0931-AGR-E **TCEQ ID:** RN102792546 **CASE NO.:** 35973
RESPONDENT NAME: Thelma Hall dba Thelma Hall 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: Thelma Hall Dairy, located approximately five miles north of the intersection of County Road SW 3170 and Pine Street on the west side of County Road SW 3170, Franklin 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 Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 20, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Thelma Hall, Owner, Thelma Hall Dairy, 4931 County Road SW 3170, Winnsboro, Texas 75494 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: January 17, 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 prevent and contain a discharge of waste and/or wastewater. Specifically, at the time of the January 17, 2008 investigation, the secondary retention control structure ("RCS") was overflowing into an unnamed tributary of Big Cypress Creek [30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(a)(1)].</p> <p>2) Failure to maintain an adequate buffer between a private well and the holding pen. Specifically, the private well at the Facility is approximately 25 feet from an open lot containing cattle [30 TEX. ADMIN. CODE § 321.47(d)(6)].</p> <p>3) Failure to restore the RCS storage capacity. Specifically, the operator was observed dewatering the RCS onto the production area. The RCS did not have adequate storage capacity to contain a 24 hour/25 year rainfall event [30 TEX. ADMIN. CODE § 321.47(e)(2)].</p> <p>4) Failure to maintain vegetative buffer strips of at least 100 feet of vegetation between waste or wastewater application areas and surface water and watercourses. Specifically, there were large, stomped out areas adjacent to the unnamed tributary of Big Cypress Creek [30 TEX. ADMIN. CODE § 321.47(f)(12)].</p>	<p>Total Assessed: \$23,400</p> <p>Total Deferred: \$4,680 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$520 (remaining \$18,200 due in 35 monthly payments of \$520 each)</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input checked="" type="checkbox"/> High <input 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 Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure the following:</p> <p>i. That there are no discharges of waste and/or wastewater from the RCSs;</p> <p>ii. That the level of the RCS is restored to capacity after each rainfall event or accumulation of manure, sludge, or process-generated wastewater that reduces the capacity of the RCS; and</p> <p>iii. That the animals at the Facility are restricted from coming into direct contact with surface water by maintaining fences or other methods of control.</p> <p>b. Within 30 days after the effective date of this Agreed Order, submit written certification that a 150-foot buffer zone has been established between the private well at the Facility and the holding pen.</p> <p>c. Within 30 days after the effective date of this Agreed Order, submit written certification that a vegetative buffer strip of at least 100 feet of vegetation has been established between the waste or wastewater application areas and the unnamed tributary of Big Cypress Creek.</p> <p>d. 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 Provisions a through c.</p>

<p>5) Failure to restrict animals at the Facility from coming into direct contact with surface water in the state through the use of fences or other controls. Specifically, cattle were observed crossing the unnamed tributary of Big Cypress Creek [30 TEX. ADMIN. CODE § 321.47(f)(19)(A)].</p>		
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Additional ID No(s): Region Assigned Number R05AG0196



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

DATES	Assigned	22-Apr-2008			
	PCW	7-Jul-2008	Screening	14-May-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Thelma Hall dba Thelma Hall Dairy
Reg. Ent. Ref. No.	RN102792546
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35973	No. of Violations	5
Docket No.	2008-0931-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Pamela Campbell
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	\$26,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-10.0% Enhancement	Subtotals 2, 3, & 7	-\$2,600
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Notes The penalty is reduced due to high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does 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 Respondent does not meet the good faith criteria.

Total EB Amounts	\$1,053	0.0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$19,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$23,400
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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 \$23,400

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$23,400
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DEFERRAL	20.0% Reduction	Adjustment	-\$4,680
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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	\$18,720
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Screening Date 14-May-2008

Docket No. 2008-0931-AGR-E

PCW

Respondent Thelma Hall dba Thelma Hall Dairy

Policy Revision 2 (September 2002)

Case ID No. 35973

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102792546

Media [Statute] Water Quality

Enf. Coordinator Pamela Campbell

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)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

The penalty is reduced due to high performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 14-May-2008 **Docket No.** 2008-0931-AGR-E **PCW**
Respondent Thelma Hall dba Thelma Hall Dairy *Policy Revision 2 (September 2002)*
Case ID No. 35973 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN102792546
Media [Statute] Water Quality
Enf. Coordinator Pamela Campbell
Violation Number
Rule Cite(s)
Violation Description Failed to prevent and contain a discharge of waste and/or wastewater. Specifically, at the time of the January 17, 2008 investigation, the secondary retention control structure ("RCS") was overflowing into an unnamed tributary of Big Cypress Creek.
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty

Four monthly events are recommended from the investigation date (January 17, 2008) to the screening date (May 14, 2008).

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$166"/>	Violation Final Penalty Total <input type="text" value="\$9,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$9,000"/>	

Economic Benefit Worksheet

Respondent Thelma Hall dba Thelma Hall Dairy
Case ID No. 35973
Reg. Ent. Reference No. RN102792546
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$3,000	17-Jan-2008	1-Nov-2008	0.79	\$8	\$158	\$166
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

This is the estimated cost to have an engineer or consultant prepare Standard Operating Procedures for the Facility. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$3,000

TOTAL

\$166

Screening Date 14-May-2008 **Docket No.** 2008-0931-AGR-E **PCW**
Respondent Thelma Hall dba Thelma Hall Dairy *Policy Revision 2 (September 2002)*
Case ID No. 35973 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN102792546
Media [Statute] Water Quality
Enf. Coordinator Pamela Campbell

Violation Number
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="10%"/>
Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<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

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
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)

Economic Benefit Worksheet

Respondent Thelma Hall dba Thelma Hall Dairy
Case ID No. 35973
Reg. Ent. Reference No. RN102792546
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,000	17-Jan-2008	1-Nov-2008	0.79	\$5	\$106	\$111
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to relocate cattle to other areas of the Facility in order to maintain a 150 feet buffer zone between the open lot and the private well. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$2,000

TOTAL

\$111

Screening Date 14-May-2008	Docket No. 2008-0931-AGR-E	PCW			
Respondent Thelma Hall dba Thelma Hall Dairy		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 35973		<small>PCW Revision April 29, 2008</small>			
Reg. Ent. Reference No. RN102792546					
Media [Statute] Water Quality					
Enf. Coordinator Pamela Campbell					
Violation Number <input type="text" value="3"/>					
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 321.47(e)(2)"/>				
Violation Description	<input type="text" value="Failed to restore the RCS storage capacity. Specifically, during the investigation, the operator was observed dewatering the RCS onto the production area. The RCS did not have adequate storage capacity to contain a 24 hour/25 year rainfall event."/>				
	Base Penalty	<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation."/>				
	Adjustment	<input type="text" value="\$9,000"/>			
		<input type="text" value="\$1,000"/>			
Violation Events					
	Number of Violation Events	<input type="text" value="2"/>	Number of violation days	<input type="text" value="118"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input checked="" type="text" value="x"/>		Violation Base Penalty <input type="text" value="\$2,000"/>	
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
	<input type="text" value="Two quarterly events are recommended from the investigation date (January 17, 2008) to the screening date (May 14, 2008)."/>				
Economic Benefit (EB) for this violation			Statutory Limit Test		
	Estimated EB Amount	<input type="text" value="\$111"/>	Violation Final Penalty Total	<input type="text" value="\$1,800"/>	
	This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,800"/>	

Economic Benefit Worksheet

Respondent Thelma Hall dba Thelma Hall Dairy
Case ID No. 35973
Reg. Ent. Reference No. RN102792546
Media 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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,000	17-Jan-2008	1-Nov-2008	0.79	\$5	\$106	\$111
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost for the Respondent to take appropriate measures to restore the storage capacity in the RCS. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$2,000

TOTAL

\$111

Screening Date 14-May-2008 **Docket No.** 2008-0931-AGR-E **PCW**
Respondent Thelma Hall dba Thelma Hall Dairy *Policy Revision 2 (September 2002)*
Case ID No. 35973 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN102792546
Media [Statute] Water Quality
Enf. Coordinator Pamela Campbell
Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 321.47(f)(12)
Violation Description Failed to maintain vegetative buffer strips of at least 100 feet of vegetation between waste or wastewater application areas and surface water and watercourses. Specifically, there were large, stomped out areas adjacent to the unnamed tributary of Big Cypress Creek.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
Release				10%
Actual				
Potential		x		

>> Programmatic Matrix

				Percent
Falsification	Major	Moderate	Minor	
				0%

Matrix Notes: Failing to maintain an adequate vegetative buffer strips between waste or wastewater application areas and surface water and watercourses could expose human health and the environment to pollutants which would not exceed levels that are protective of human health as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 118

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the investigation date (January 17, 2008) to the screening date (May 14, 2008).

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$388	Violation Final Penalty Total \$1,800
This violation Final Assessed Penalty (adjusted for limits) \$1,800	

Economic Benefit Worksheet

Respondent Thelma Hall dba Thelma Hall Dairy
Case ID No. 35973
Reg. Ent. Reference No. RN102792546
Media 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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,000	17-Jan-2008	1-Nov-2008	0.79	\$5	\$106	\$111
Engineering/construction	\$5,000	17-Jan-2008	1-Nov-2008	0.79	\$13	\$264	\$277
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

This is the estimated cost to install fencing around the production area and to reseed and/or plant vegetation between the production area and the unnamed tributary of Big Cypress Creek. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$7,000

TOTAL

\$388

Screening Date 14-May-2008 **Docket No.** 2008-0931-AGR-E **PCW**
Respondent Thelma Hall dba Thelma Hall Dairy *Policy Revision 2 (September 2002)*
Case ID No. 35973 *PCW Revision April 29, 2008*
Reg. Ent. Reference No. RN102792546
Media [Statute] Water Quality
Enf. Coordinator Pamela Campbell

Violation Number

Rule Cite(s)

Violation Description

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	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>	

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an x

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

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 Thelma Hall dba Thelma Hall Dairy
Case ID No. 35973
Reg. Ent. Reference No. RN102792546
Media 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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	17-Jan-2008	1-Nov-2008	0.79	\$13	\$264	\$277
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

This is the estimated cost to install fencing to keep the cattle out of the unnamed tributary of Big Cypress Creek. The date required is the investigation date and the final date is the anticipated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$5,000

TOTAL

\$277

Compliance History

Customer/Respondent/Owner-Operator: CN601520760 HALL, THELMA Classification: HIGH Rating: 0.00
Regulated Entity: RN102792546 THELMA HALL DAIRY Classification: HIGH Site Rating: 0.00
ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R05AG0196
Location: APPROX. 5 MILES N OF THE INTERSECTION OF CR SW 3170 AND PINE STREET ON THE W SIDE OF CR SW 3170, FRANKLIN CO, TEXAS Rating Date: 9/1/2007 Repeat Violator: NO
REGION 05 - TYLER
TCEQ Region: May 13, 2008
Date Compliance History Prepared: Enforcement
Agency Decision Requiring Compliance History: May 13, 2003 to May 13, 2008
Compliance Period: Regarding this Compliance History
TCEQ Staff Member to Contact for Additional Information: Pamela Campbell
Name: Phone: 512 239-4493

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? Yes
3. If Yes, who is the current owner? Thelma Hall
4. If Yes, who was/were the prior owner(s)? Joyce Jarrell
5. When did the change(s) in ownership occur? July 21, 2005

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 01/26/2004 (260573)

2 07/21/2005 (398926)

3 07/22/2005 (398927)

4 05/19/2006 (464786)

5 07/03/2007 (564195)

6 04/18/2008 (640498)

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
THELMA HALL DBA THELMA
HALL DAIRY
RN102792546

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0931-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 Thelma Hall dba Thelma Hall Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy located approximately five miles north of the intersection of County Road SW 3170 and Pine Street on the west side of County Road SW 3170 in Franklin County, Texas (the "Facility").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Three Thousand Four Hundred Dollars (\$23,400) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). The Respondent has paid Five Hundred Twenty Dollars (\$520) of the administrative penalty and Four Thousand Six Hundred Eighty Dollars (\$4,680) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Eighteen Thousand Two Hundred Dollars (\$18,200) of the administrative penalty shall be payable in 35 monthly payments of Five Hundred Twenty Dollars (\$520) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent and contain a discharge of waste and/or wastewater, in violation of 30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on January 17, 2008. Specifically, at the time of the January 17, 2008 investigation, the secondary retention control structure ("RCS") was overflowing into an unnamed tributary of Big Cypress Creek.

2. Failed to maintain an adequate buffer between a private well and the holding pen, in violation of 30 TEX. ADMIN. CODE § 321.47(d)(6), as documented during an investigation conducted on January 17, 2008. Specifically, the private well at the Facility is approximately 25 feet from an open lot containing cattle.
3. Failed to restore the RCS storage capacity, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(2), as documented during an investigation conducted on January 17, 2008. Specifically, the operator was observed dewatering the RCS onto the production area. The RCS did not have adequate storage capacity to contain a 24 hour/25 year rainfall event.
4. Failed to maintain vegetative buffer strips of at least 100 feet of vegetation between waste or wastewater application areas and surface water and watercourses, in violation of 30 TEX. ADMIN. CODE § 321.47(f)(12), as documented during an investigation conducted on January 17, 2008. Specifically, there were large, stomped out areas adjacent to the unnamed tributary of Big Cypress Creek.
5. Failed to restrict animals at the Facility from coming into direct contact with surface water in the state through the use of fences or other controls, in violation of 30 TEX. ADMIN. CODE § 321.47(f)(19)(A), as documented during an investigation conducted on January 17, 2008. Specifically, cattle were observed crossing the unnamed tributary of Big Cypress Creek.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Thelma Hall dba Thelma Hall Dairy, Docket No. 2008-0931-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure the following:

- i. That there are no discharges of waste and/or wastewater from the RCSs;
 - ii. That the level of the RCS is restored to capacity after each rainfall event or accumulation of manure, sludge, or process-generated wastewater that reduces the capacity of the RCS; and
 - iii. That the animals at the Facility are restricted from coming into direct contact with surface water by maintaining fences or other methods of control.
- b. Within 30 days after the effective date of this Agreed Order, submit written certification that a 150 foot buffer zone has been established between the private well at the Facility and the holding pen.
 - c. Within 30 days after the effective date of this Agreed Order, submit written certification that a vegetative buffer strip of at least 100 feet of vegetation has been established between the waste or wastewater application areas and the unnamed tributary of Big Cypress Creek.
 - d. 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 Nos. 2.a through 2.c. 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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Ordier
For the Executive Director

10/2/2008
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.

Thelma Hall
Signature

8-09-2008
Date

Thelma Hall
Name (Printed or typed)
Authorized Representative of
Thelma Hall dba Thelma Hall Dairy

Owner
Title

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

