

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0624-AGR-E TCEQ ID: RN102844768 CASE NO.: 33267

RESPONDENT NAME: DENNIS JAMES SCHOUTEN DBA DENNIS SCHOUTEN 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 checked="" type="checkbox"/> AGRICULTURE	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: The west side of SH 108, approximately 1.25 miles southeast of Huckabay, Erath County</p> <p>TYPE OF OPERATION: Dairy concentrated animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</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 January 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Dimmah M. Chahin, Litigation Division, MC 175, (512) 239-0617 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Water Enforcement Section, MC 169, (512) 239-1364 TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901 Respondent: Mr. Dennis James Schouten, Owner, Dennis Schouten Dairy, 17743 North State Highway 108, Stephenville, Texas 76401 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: March 12, 2007</p> <p>Date of NOE Relating to this Case: March 30, 2007</p> <p>Background Facts: A settlement agreement was reached with the Respondent, and an Agreed Order was received on October 24, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AGR: Failed to develop and operate under a comprehensive nutrient management plan certified by the Texas State Soil and Water Conservation Board [30 TEX. ADMIN. CODE § 321.42(s)].</p>	<p>Total Assessed: \$2,340</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,340</p> <p>The Respondent has paid the administrative penalty in full.</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 Action Taken</p> <p>The Executive Director recognizes that on May 7, 2007, the Respondent began operating under a comprehensive nutrient management plan certified by the Texas State Soil and Water Conservation Board.</p>



Penalty Calculation Worksheet (PCW)

DATES	Assigned	2-Apr-2007	Screening	4-Apr-2007	EPA Due	
	PCW	2-Jul-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Dennis James Schouten dba Dennis Schouten Dairy		
Reg. Ent. Ref. No.	RN102844768		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33267	No. of Violations	1
Docket No.	2007-0624-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 27% Enhancement Subtotals 2, 3, & 7:

Notes: The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action and one agreed order without a denial of liability.

Culpability No 0% Enhancement Subtotal 4:

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5:

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

Notes: The Respondent achieved compliance on May 7, 2007.

Total EB Amounts 0% Enhancement* Subtotal 6:
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal:

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment:

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

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty:

DEFERRAL Reduction Adjustment:

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

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY

Screening Date 4-Apr-2007

Docket No. 2007-0624-AGR-E

PCW

Respondent Dennis James Schouten dba Dennis Schouten Dairy

Policy Revision 2 (September 2002)

Case ID No. 33267

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102844768

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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	1	25%
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) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action and one agreed order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 4-Apr-2007

Docket No. 2007-0624-AGR-E

PCW

Respondent Dennis James Schouten dba Dennis Schouten Dairy

Policy Revision 2 (September 2002)

Case ID No. 33267

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102844768

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.42(s)

Violation Description

Failed to develop and operate under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB"). Specifically, a CNMP was submitted to the TSSWCB for review, but the Respondent failed to respond to requests for additional information from the TSSWCB and the TCEQ.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	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 2

58 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$2,000

Two monthly events are recommended from the February 5, 2007 deadline to submit requested information to the TSSWCB until the April 4, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$244

Violation Final Penalty Total \$2,340

This violation Final Assessed Penalty (adjusted for limits) \$2,340

Economic Benefit Worksheet

Respondent: Dennis James Schouten dba Dennis Schouten Dairy
Case ID No.: 33267
Reg. Ent. Reference No.: RN102844768
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
<i>No commas or \$</i>							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	31-Dec-2006	7-May-2007	0.3	\$12	\$232	\$244
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a comprehensive nutrient management plan. Date required is the date the plan was required to be certified and implemented. Final date is the 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

\$244

Compliance History

Customer/Respondent/Owner-Operator:	CN601116429	SCHOUTEN, DENNIS JAMES	Classification: AVERAGE	Rating: 40.20
Regulated Entity:	RN102844768	DENNIS SCHOUTEN DAIRY	Classification: AVERAGE	Site Rating: 40.20
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE	PERMIT EPA ID	WQ0004133000 TX0128422	
Location:	LOCATED ON THE W SIDE OF SH 108, APPRX 1.25 M SE OF HUCKABAY, ERATH CO, TX			Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 12, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 04, 2002 to April 04, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Lynley Doyen	Phone: 512-239-1364			

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? 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.

Effective Date: 01/30/2004 ADMINORDER 2001-1005-AGR-E

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)[G]
 Rqmt Prov: VI B 1 b PERMIT & VII(2) PERMIT
 Description: Failed to stop waste and wastewater application to a field after soil analysis results indicated phosphorus levels in excess 200ppm.

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: IV PERMIT & VII(2) & (4) PERMIT
 Description: Failed to include all retention control structures in the permit application.

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 321, SubChapter B 321.39(f)(24)(A)
 Rqmt Prov: VI (F)(2) & VII(2) PERMIT
 Description: Failed to provide adequate containment structures for all manure storage piles.

Classification: Minor
 Citation: 30 TAC Chapter 220, SubChapter B 220.21[G]
 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter M 305.503[G]
 Rqmt Prov: Sections VII(5) & (2) PERMIT
 Description: Failed to pay the Wastewater Treatment Inspection Fee & Water Quality Assessment Fee in a timely manner.

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 06/30/2003 (60345)
- 2 08/25/2004 (290674)
- 3 04/07/2005 (374968)
- 4 01/18/2006 (451439)
- 5 11/27/2006 (519359)
- 6 03/29/2007 (543782)

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

Date: 04/04/2005 (374968)

Self Report? NO
Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)
Description: Failure to submit soil sample results within the required 60 days to the TCEQ

Classification: Minor

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
DENNIS JAMES SCHOUTEN DBA
DENNIS SCHOUTEN DAIRY;
RN102844768

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0624-AGR-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 Dennis James Schouten dba Dennis Schouten Dairy ("Mr. Schouten") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Schouten appear before the Commission and together stipulate that:

1. Mr. Schouten owns and operates a dairy concentrated animal feeding operation located on the west side of SH 108, approximately 1.25 miles southeast of Huckabay, Erath 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 and TCEQ rules.
3. The Commission and Mr. Schouten agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Schouten is subject to the Commission's jurisdiction.
4. Mr. Schouten received notice of the violations alleged in Section II ("Allegations") on or about April 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Schouten of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two thousand three hundred forty dollars (\$2,340.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Schouten has paid two thousand three hundred forty dollars (\$2,340.00) 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 Mr. Schouten 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 7, 2007, Dennis Schouten Dairy began operating under a comprehensive nutrient management plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB").
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 Mr. Schouten 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

Mr. Schouten is alleged to have violated 30 TEX. ADMIN. CODE § 321.42(s) by failing to develop and operate under a CNMP certified by the TSSWCB as documented on March 12, 2007. Specifically, a CNMP was submitted to the TSSWCB for review, but Mr. Schouten failed to respond to requests for additional information from the TSSWCB and the TCEQ.

III. DENIALS

Mr. Schouten generally denies each allegation in Section II ("Allegations").

IV. ORDER

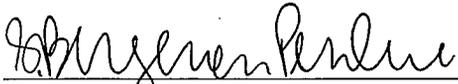
1. It is, therefore, ordered by the TCEQ that Mr. Schouten pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Schouten's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: Dennis James Schouten dba Dennis Schouten Dairy, Docket No. 2007-0624-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 provisions of this Agreed Order shall apply to and be binding upon Mr. Schouten. Mr. Schouten 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Schouten 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.
4. 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.
5. 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 Mr. Schouten, or three days after the date on which the Commission mails notice of the Order to Mr. Schouten, 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



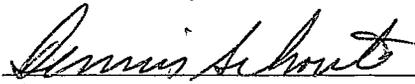
Date

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.

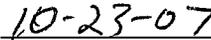
I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

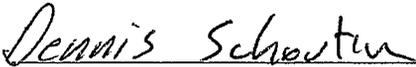
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature



Date



Name (Printed or typed)



Title

Authorized representative of

Dennis James Schouten dba Dennis Schouten Dairy