

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.: 2007-0513-AGR-E TCEQ ID: RN101527570 CASE NO.:33102**  
**RESPONDENT NAME: ROEL STOKER DBA NED TEX DAIRY**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> County Road 913, one quarter of a mile south of the intersection of County Road 913 and Highway 67, Erath County</p> <p><b>TYPE OF OPERATION:</b> Concentrated animal feeding operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Mary Hammer, Litigation Division, MC 175, (512) 239-2496  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Tom Jecha, Air Enforcement Section, MC 149, (512) 239-2576  <b>TCEQ Regional Contact:</b> Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901  <b>Respondent:</b> Mr. Roel Stoker, Owner, Ned Tex Dairy, 9543 FM 913, Stephenville, Texas 76401  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b>                      None</p> <p><b>Dates of Investigation Relating to this Case:</b>                      March 23, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      March 23, 2007</p> <p><b>Background Facts:</b></p> <p>An EDRP was filed May 25, 2007. A settlement agreement was reached with the Respondent on July 16, 2007, and a signed Agreed Order was received on July 30, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>AGR</b></p> <p>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><b>Total Assessed:</b> \$1,860</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,860</p> <p>The Respondent has paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Action Taken</b></p> <p>The Executive Director recognizes that Mr. Stoker's Comprehensive Nutrient Management Plan was certified by the Texas State Soil and Water Conservation Board on April 2, 2007.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

**TCEQ**

<b>DATES</b>	Assigned	26-Mar-2006	Screening	29-Mar-2007	EPA Due	
	PCW	17-Jul-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Roel Stoker dba Ned Tex Dairy		
Reg. Ent. Ref. No.	RN101527570		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33102	No. of Violations	1	
Docket No.	2007-0513-AGR-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Tom Jecha	
Multi-Media		EC's Team	EnforcementTeam 3	
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** **Subtotals 2, 3, & 7**

Notes: Enhancement for two NOV's with dissimilar violations and one Notice of Intent to Audit at the same facility within the past five years.

**Culpability** **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **Subtotal 5**

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

Notes: The Respondent's CNMP was certified on April 2, 2007 before mailout of the EDPRP on May 25, 2007.

**Total EB Amounts**  **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** **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 29-Mar-2007

Docket No. 2007-0513-AGR-E

PCW

Respondent Roel Stoker dba Ned Tex Dairy

Policy Revision 2 (September 2002)

Case ID No. 33102

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101527570

Media [Statute] Water Quality

Enf. Coordinator Tom Jecha

### 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	2	4%
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)	1	-1%
	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) 3%

>> 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

Enhancement for two NOVs with dissimilar violations and one Notice of Intent to Audit at the same facility within the past five years.

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

Screening Date 29-Mar-2007

Docket No. 2007-0513-AGR-E

PCW

Respondent Roel Stoker dba Ned Tex Dairy

Policy Revision 2 (September 2002)

Case ID No. 33102

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN101527570

Media [Statute] Water Quality

Enf. Coordinator Tom Jecha

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

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 checked="" type="checkbox"/>
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 **Roel Stoker dba Ned Tex Dairy**

Case ID No. **33102**

Reg. Ent. Reference No. **RN101527570**

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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$10,000	31-Dec-2006	2-Apr-2007	0.3	\$126	n/a	\$126
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a CNMP from the date the plan was required to be certified and implemented until 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

\$126

## Compliance History

Customer/Respondent/Owner-Operator:	CN600801088 STOKER, ROEL	Classification: AVERAGE	Rating: 0.17
Regulated Entity:	RN101527570 NED TEX DAIRY	Classification: AVERAGE	Site Rating: 0.17
ID Number(s):	WASTEWATER AGRICULTURE PERMIT	WQ0004028000	
Location:	The facility is located on CR 913 one quarter of a mile S of intersection of CR 913 and HWY 67	Rating Date: 9/1/2006 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	March 27, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 27, 2002 to March 27, 2007		

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

Name: Tom Jecha Phone: 512-239-2576

### Site Compliance History Components

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

### 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 | 05/03/2002 | (630)    |
| 2 | 05/07/2003 | (31481)  |
| 3 | 02/03/2004 | (260320) |
| 4 | 08/11/2005 | (404599) |
| 5 | 03/09/2006 | (452677) |
| 6 | 01/03/2007 | (533627) |
| 7 | 02/26/2007 | (541660) |
| 8 | 03/23/2007 | (543434) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                       |
|--------------|---|----------|-----------------------|
| Date:        | 03/03/2006  | (452677) |                       |
| Self Report? | NO  |          | Classification: Minor |
| Citation:    | 30 TAC Chapter 321, SubChapter B 321.39(f)(29)  |          |                       |
| Description: | FAILURE TO ANALYZE A ANNUAL REPRESENTATIVE SLURRY ANALYSIS.   |          |                       |
| Date:        | 06/02/2006  | (480951) |                       |
| Self Report? | NO  |          | Classification: Minor |
| Citation:    | 30 TAC Chapter 321, SubChapter B 321.40(7)  |          |                       |
| Description: | FAILURE TO OBSERVE THE REQUIRED 100 FOOT BUFFER DISTANCE BETWEEN WASTE APPLICATION AREAS AND WATER COURSES. |          |                       |
- F. Environmental audits.  
Notice of Intent Date: 07/25/2003 (251229)  
No DOV Associated
- 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  
ROEL STOKER  
DBA NED TEX DAIRY,  
RN101527570

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-0513-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 Roel Stoker dba Ned Tex Dairy ("Mr. Stoker") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Stoker, appear before the Commission and together stipulate that:

1. Mr. Stoker owns and operates a concentrated animal feeding operation located on County Road 913, one quarter of a mile south of the intersection of County Road 913 and Highway 67, in 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. Stoker agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Stoker is subject to the Commission's jurisdiction.
4. Mr. Stoker received notice of the violations alleged in Section II ("Allegations") on or about March 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Stoker of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of one thousand eight hundred sixty dollars (\$1,860.00) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). Mr. Stoker has paid one thousand eight hundred sixty dollars (\$1,860.00) 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. Stoker 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 Mr. Stoker's Comprehensive Nutrient Management Plan ("CNMP") was certified by the Texas State Soil and Water Conservation Board ("TSSWCB") on April 2, 2007.
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. Stoker 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. Stoker 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 during an investigation conducted on March 23, 2007. Specifically, a CNMP was submitted to the TSSWCB for review, but Mr. Stoker failed to respond to requests for additional information from the TSSWCB and the TCEQ.

## III. DENIALS

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

## IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Stoker pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Stoker'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: Roel Stoker dba Ned Tex Dairy, Docket No. 2007-0513-AGR-E" to:

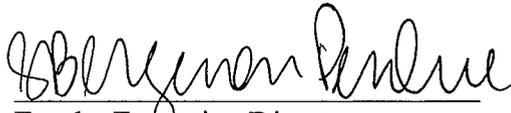
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Stoker. Mr. Stoker 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. Stoker 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. Stoker, or three days after the date on which the Commission mails notice of the Order to Mr. Stoker, 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

11/28/07

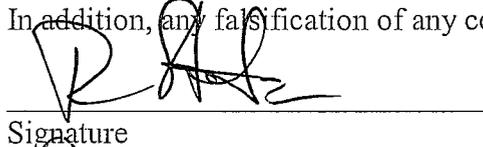
Date

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

Roel Stoker  
\_\_\_\_\_  
Name (Printed or typed)

Authorized representative of  
Roel Stoker dba Ned Tex Dairy

7-26-07  
\_\_\_\_\_  
Date

owner  
\_\_\_\_\_  
Title