

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1323-AGR-E **TCEQ ID:** RN104348412 **CASE NO.:** 34435
RESPONDENT NAME: Larry Martindale dba Sundance 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: Sundance Dairy, 1040 Farm-to-Market Road 2848, Cooke County</p> <p>TYPE OF OPERATION: Dairy operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received May 7, 2007, alleging the dairy was discharging sludge into the adjacent creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Larry Martindale, Owner, Sundance Dairy, 1040 Farm-to-Market Road 2848, Era, Texas 76238 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: May 7, 2007</p> <p>Date of Investigation Relating to this Case: May 17, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 16, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failed to properly operate the Facility. Specifically, the investigator documented several solids piles and accumulated solids around the Facility [30 TEX. ADMIN. CODE § 321.47(c)(1)].</p> <p>2) Failed to prevent the unauthorized discharge of manure, litter, or wastewater from an animal feeding operation into or adjacent to water in the state. Specifically, the investigator documented discharge routes from piled and accumulated solids which led to a nearby creek [30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$1,575</p> <p>Total Deferred: \$315 <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: \$180 (remaining \$1,080 due in 6 monthly payments of \$180 each)</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 the Respondent removed the solid piles on May 24, 2007.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges by implementing best management practices to prevent agricultural waste from coming into contact with water in the state;</p> <p>b. Within 30 days after the effective date of this Agreed Order, begin operating the Facility in accordance with the requirements of 30 TEX. ADMIN. CODE § 321.47; and</p> <p>c. 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. and b.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	23-Jul-2007	Screening	15-Aug-2007	EPA Due	
	PCW	17-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Larry Martindale dba Sundance Dairy
Reg. Ent. Ref. No.	RN104348412
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34435	No. of Violations	2
Docket No.	2007-1323-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Samuel Short
Multi-Media		EC's Team	Enforcement Team 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

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

Subtotal 6

Total EB Amounts	\$161
Approx. Cost of Compliance	\$4,500

*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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 15-Aug-2007

Docket No. 2007-1323-AGR-E

PCW

Respondent Larry Martindale dba Sundance Dairy

Policy Revision 2 (September 2002)

Case ID No. 34435

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104348412

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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	0	0%
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) 5%

>> **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

A 5% enhancement is recommended for having one NOV for the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 15-Aug-2007	Docket No. 2007-1323-AGR-E	PCW				
Respondent Larry Martindale dba Sundance Dairy	<i>Policy Revision 2 (September 2002)</i>					
Case ID No. 34435	<i>PCW Revision June 26, 2007</i>					
Reg. Ent. Reference No. RN104348412						
Media [Statute] Water Quality						
Enf. Coordinator Samuel Short						
Violation Number <input type="text" value="1"/>						
Rule Cite(s)	30 Tex. Admin. Code § 321.47(c)(1)					
Violation Description	Failed to properly operate the Facility. Specifically, the investigator documented several solids piles and accumulated solids around the facility.					
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 type="text"/>	<input checked="" type="text" value="x"/>			
		Percent	<input type="text" value="5%"/>			
>> 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	Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					
				Adjustment	<input type="text" value="\$9,500"/>	
					<input type="text" value="\$500"/>	
Violation Events						
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		<input type="text" value="90"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>				
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input checked="" type="text" value="x"/>				
					Violation Base Penalty	<input type="text" value="\$500"/>
One single event is recommended.						
Economic Benefit (EB) for this violation			Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$70"/>	Violation Final Penalty Total		<input type="text" value="\$525"/>	
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$525"/>	

Economic Benefit Worksheet

Respondent Larry Martindale dba Sundance Dairy
Case ID No. 34435
Reg. Ent. Reference No. RN104348412
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
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No commas or \$

Delayed Costs

Equipment	\$1,000	17-May-2007	24-May-2007	0.0	\$0	\$1	\$1
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				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	17-May-2007	15-Apr-2008	0.9	\$69	n/a	\$69

Notes for DELAYED costs

The estimated cost to remove the solids piles. Date required is the date that the piles were observed and the final date is the date the piles were removed from the Facility. The estimated cost to properly operate the facility. Date required is the investigation date and the final date is the projected 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

\$2,500

TOTAL

\$70

Screening Date 15-Aug-2007

Docket No. 2007-1323-AGR-E

PCW

Respondent Larry Martindale dba Sundance Dairy

Policy Revision 2 (September 2002)

Case ID No. 34435

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN104348412

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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 checked="" type="checkbox"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Adjustment

Violation Events

Number of Violation Events

Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	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 Larry Martindale dba Sundance Dairy
Case ID No. 34435
Reg. Ent. Reference No. RN104348412
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	17-May-2007	15-Apr-2008	0.9	\$92	n/a	\$92

Notes for DELAYED costs

Estimated cost to implement best management practices to prevent unauthorized discharges of agricultural waste. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$92

Compliance History

Customer/Respondent/Owner-Operator: CN602672065 MARTINDALE, LARRY Classification: AVERAGE Rating: 0.50
Regulated Entity: RN104348412 SUNDANCE DAIRY Classification: AVERAGE Site Rating: 0.50
ID Number(s):
Location: 1040 FM 2848, Cooke County TX Rating Date: September 01 06 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 24, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 24, 2002 to July 24, 2007

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

Name: Samuel Short Phone: (512) 239-5363

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 08/25/2004 (291552)
2 07/17/2007 (567791)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 08/20/2004 (291552)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.33(e)
30 TAC Chapter 321, SubChapter B 321.47
Description: FAILURE TO COMPLETE AND MEET THE TECHNICAL REQUIREMENTS OF AN ANIMAL FEEDING OPERATION AS OUTLINED IN ?30 TAC 321.33(e) pre JULY 15, 2004 OR ? 30 TAC 321.47 AFTER JULY 15, 2004.
- 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
LARRY MARTINDALE DBA
SUNDANCE DAIRY
RN104348412

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1323-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 Larry Martindale dba Sundance Dairy ("Mr. Martindale") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Martindale appear before the Commission and together stipulate that:

1. Mr. Martindale owns and operates a dairy operation at 1040 Farm-to-Market Road 2848 in Cooke County, Texas (the "Facility").
2. Mr. Martindale has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Mr. Martindale agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Martindale is subject to the Commission's jurisdiction.
4. Mr. Martindale received notice of the violations alleged in Section II ("Allegations") on or about July 21, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Martindale of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Martindale has paid One Hundred Eighty Dollars (\$180) of the

administrative penalty and Three Hundred Fifteen Dollars (\$315) is deferred contingent upon Mr. Martindale's timely and satisfactory compliance with all the terms of this Agreed Order. If Mr. Martindale fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Martindale to pay all or part of the deferred penalty.

The remaining amount of One Thousand Eighty Dollars (\$1,080) of the administrative penalty shall be payable in six monthly payments of One Hundred Eighty Dollars (\$180) 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 Mr. Martindale 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 Mr. Martindale to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Martindale 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 Mr. Martindale 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. Martindale removed the solids piles on May 24, 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. Martindale 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

As owner and operator of the Facility, Mr. Martindale is alleged to have:

1. Failed to properly operate the Facility, in violation of 30 TEX. ADMIN. CODE § 321.47(c)(1), as documented during an investigation conducted on May 17, 2007. Specifically, the investigator documented several solids piles and accumulated solids around the Facility.
2. Failed to prevent the unauthorized discharge of manure, litter, or wastewater from an animal feeding operation into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE

§ 321.31(a) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on May 17, 2007. Specifically, the investigator documented discharge routes from piled and accumulated solids which led to a nearby creek.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Martindale pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Martindale'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: Larry Martindale dba Sundance Dairy, Docket No. 2007-1323-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 Mr. Martindale shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges by implementing best management practices to prevent agricultural waste from coming into contact with water in the state;
 - b. Within 30 days after the effective date of this Agreed Order, begin operating the facility in accordance with the requirements of 30 TEX. ADMIN. CODE § 321.47; and
 - c. 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. and 2.b. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Martindale. Mr. Martindale 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 Mr. Martindale 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, Mr. Martindale's failure to comply is not a violation of this Agreed Order. Mr. Martindale shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Martindale shall notify the Executive Director within seven days after Mr. Martindale 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 Mr. Martindale shall be made in writing to the Executive Director. Extensions are not effective until Mr. Martindale 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 Mr. Martindale 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 Mr. Martindale, or three days after the date on which the Commission mails notice of the Order to Mr. Martindale, 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 S. Sullivan
For the Executive Director

2/7/2008
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.

Larry Martindale
Signature

11-5-07
Date

Larry Martindale
Name (Printed or typed)
Authorized Representative of
Larry Martindale dba Sundance 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.