

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1352-AGR-E **TCEQ ID:** RN101917771 **CASE NO.:** 34458

RESPONDENT NAME: Leon Heijligers dba Center Point Dairy, LLP

| | | |
|---|---|--|
| 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: Center Point Dairy, 6414 Farm-to-Market Road 2653 South, Hopkins County</p> <p>TYPE OF OPERATION: Dairy</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received June 11, 2007, alleging that dairy wastewater was leaving the Respondent's property. 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 April 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Leon Heijligers, Partner, Center Point Dairy, LLP, 6414 Farm-to-Market Road 2653 South, Cumby, Texas 75433 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: June 11, 2007</p> <p>Date of Investigation Relating to this Case: June 11 through June 22, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 27, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failed to maintain the retention control structure ("RCS") in compliance with the technical standards developed by the Natural Resources Conservation Service. Specifically, RCSs built without spillways are required to have a minimum of two vertical feet between the top of the embankment and the required storage capacity, but it was observed to be without freeboard and wastewater breached the existing dam of the structure, and the dam on the northwest corner of the RCS visually appeared to be structurally compromised [30 TEX. ADMIN. CODE § 321.38(e)(5) and (g)(2)].</p> <p>2) Failed to collect a sample and notify the appropriate regional office within 24 hours of the occurrence of a discharge. Specifically, it was determined that samples were not collected for the discharges nor were the discharges reported that occurred on May 25, 28, and 30, and June 12, 2007 [30 TEX. ADMIN. CODE § 321.44(a), and Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920161, Parts III.A.5 and IV.B.5].</p> <p>3) Failed to prevent the unauthorized discharge of wastewater from the operation of a CAFO [30 TEX. ADMIN. CODE § 321.31(a), and TEX. WATER CODE § 26.121(a)].</p> | <p>Total Assessed: \$4,000</p> <p>Total Deferred: \$800 <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: \$210 (remaining \$2,990 due in 23 monthly payments of \$130 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:</p> <p>i. Repair the dam located on the northwest corner of the RCS to prevent future discharges;</p> <p>ii. Begin ensuring that the RCS maintains a minimum of two vertical feet between the top of the embankment and the required storage capacity of the RCS;</p> <p>iii. Establish a procedure whereby the regional office is notified orally within 24 hours and in writing within 14 working days of a discharge from the RCS structure or any component of the waste handling or land application system;</p> <p>iv. Establish and implement a procedure whereby the required grab samples are collected within 30 minutes of the occurrence of a discharge, analyzed, and the results reported to the regional office; and</p> <p>v. Establish and implement procedures whereby unauthorized discharges of wastewater from the CAFO are prevented.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> |

Additional ID No(s): WQ0003872000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

| | | | | | | |
|--------------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 13-Aug-2007 | Screening | 20-Aug-2007 | EPA Due | |
| | PCW | 11-Jan-2008 | | | | |

| | | | |
|--|---|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Leon Heijligers dba Center Point Dairy, LLP | | |
| Reg. Ent. Ref. No. | RN101917771 | | |
| Facility/Site Region | 5-Tyler | Major/Minor Source | Minor |

| | | | | |
|-------------------------|-----------------|-------------------|-------------------|----------|
| CASE INFORMATION | | | | |
| Enf./Case ID No. | 34458 | No. of Violations | 3 | |
| Docket No. | 2007-1352-AGR-E | Order Type | 1660 | |
| Media Program(s) | Water Quality | Enf. Coordinator | J. Craig Fleming | |
| 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: A 5% reduction is recommended for having a High Performer Classification and one NOV with same/similar violations.

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 | | |
| N/A | X | (mark with x) |

Notes: The Respondent does not meet the good faith criteria.

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**

Notes: Recommend a penalty enhancement to capture the avoided cost associated with Violation No. 2.

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 offered for expedited settlement.

PAYABLE PENALTY

Screening Date 20-Aug-2007

Docket No. 2007-1352-AGR-E

PCW

Respondent Leon Heijligers dba Center Point Dairy, LLP

Policy Revision 2 (September 2002)

Case ID No. 34458

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101917771

Media [Statute] Water Quality

Enf. Coordinator J. Craig Fleming

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria) | 1 | 5% |
| | Other written NOV's | 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 judgments 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% |
| <i>Please Enter Yes or No</i> | | | |
| 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)**

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

A 5% reduction is recommended for having a High Performer Classification and one NOV with same/similar violations.

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

| | | | | | | |
|---|--|----------------------|-------------------------------|----------------------|-------------------------------|---------|
| Screening Date 20-Aug-2007 | Docket No. 2007-1352-AGR-E | PCW | | | | |
| Respondent Leon Heijligers dba Center Point Dairy, LLP | <i>Policy Revision 2 (September 2002)</i> | | | | | |
| Case ID No. 34458 | <i>PCW Revision June 26, 2007</i> | | | | | |
| Reg. Ent. Reference No. RN101917771 | | | | | | |
| Media [Statute] Water Quality | | | | | | |
| Enf. Coordinator J. Craig Fleming | | | | | | |
| Violation Number | 1 | | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 321.38(e)(5) and (g)(2) | | | | | |
| Violation Description | Failed to maintain the retention control structure ("RCS") in compliance with the technical standards developed by the Natural Resources Conservation Service. Specifically, RCSs built without spillways are required to have a minimum of two vertical feet between the top of the embankment and the required storage capacity, but it was observed to be without freeboard and wastewater breached the existing dam of the structure, and the dam on the northwest corner of the RCS visually appeared to be structurally compromised, as observed during the investigations conducted from June 11 through June 22, 2007. | | | | | |
| Base Penalty | | \$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"/> | x | <input type="text"/> | | | |
| | | Percent | 10% | | | |
| >> Programmatic Matrix | | | | | | |
| | | Falsification | Major | Moderate | Minor | |
| | | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| | | | | Percent | 0% | |
| Matrix Notes | Human health or the environment will or 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 the violation. | | | | | |
| | | | | Adjustment | \$9,000 | |
| | | | | | \$1,000 | |
| Violation Events | | | | | | |
| Number of Violation Events | | 1 | Number of violation days | | | |
| | | 2 | | | | |
| <i>mark only one with an x</i> | daily | <input type="text"/> | | | | |
| | monthly | <input type="text"/> | | | | |
| | quarterly | x | | | | |
| | semiannual | <input type="text"/> | | | | |
| | annual | <input type="text"/> | | | | |
| | single event | <input type="text"/> | | | | |
| | | | | | Violation Base Penalty | \$1,000 |
| One quarterly event is recommended based on the dates of the investigations conducted on June 11 through 22, 2007 to the screening date of August 20, 2007. | | | | | | |
| Economic Benefit (EB) for this violation | | | Statutory Limit Test | | | |
| Estimated EB Amount | | \$57 | Violation Final Penalty Total | | \$950 | |
| This violation Final Assessed Penalty (adjusted for limits) | | | | | \$950 | |

Economic Benefit Worksheet

Respondent: Leon Heijligers dba Center Point Dairy, LLP
Case ID No.: 34458
Reg. Ent. Reference No.: RN101917771
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 | \$1,000 | 11-Jun-2007 | 1-Apr-2008 | 0.8 | \$3 | \$54 | \$57 |
| 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 repair the dam on the northwest corner of the retention structure and maintain a minimum of 2 feet between the top of the embankment and the required storage capacity of the RCS. The Date Required was the date of the investigation. The 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

NA

Approx. Cost of Compliance

\$1,000

TOTAL

\$57

| | | |
|---|---|---------------------------------------|
| Screening Date 20-Aug-2007 | Docket No. 2007-1352-AGR-E | PCW |
| Respondent Leon Heijligers dba Center Point Dairy, LLP | <i>Policy Revision 2 (September 2002)</i> | |
| Case ID No. 34458 | <i>PCW Revision June 26, 2007</i> | |
| Reg. Ent. Reference No. RN101917771 | | |
| Media [Statute] Water Quality | | |
| Enf. Coordinator J. Craig Fleming | | |
| Violation Number <input type="text" value="2"/> | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 321.44(a), and CAFO General Permit No. TXG920161, Parts III.A.5 and IV.B.5 | |
| Violation Description | Failed to collect a sample and notify the appropriate regional office verbally within 24 hours of the occurrence of a discharge. Specifically, it was determined that samples were not collected for the discharges nor were the discharges reported that occurred May 25, 28, and 30, and June 12, 2007, as documented during the investigations conducted from June 11 through June 22, 2007. | |
| 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"/> | 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 do not exceed levels that are protective of human health or environmental receptors as a result of the violation. | | | | |

Adjustment

Violation Events

| | | | | | | | | | | | | | |
|--|--------------------------------|--------------------------|---------|----------------------|-----------|----------------------|------------|----------------------|--------|----------------------|--------------|---|--|
| Number of Violation Events <input type="text" value="4"/> | <input type="text" value="4"/> | Number of violation days | | | | | | | | | | | |
| mark only one with an x <table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td style="width: 40px;"><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td style="text-align: center;">x</td></tr> </table> | daily | <input type="text"/> | monthly | <input type="text"/> | quarterly | <input type="text"/> | semiannual | <input type="text"/> | annual | <input type="text"/> | single event | x | Violation Base Penalty <input type="text" value="\$2,000"/> |
| daily | <input type="text"/> | | | | | | | | | | | | |
| monthly | <input type="text"/> | | | | | | | | | | | | |
| quarterly | <input type="text"/> | | | | | | | | | | | | |
| semiannual | <input type="text"/> | | | | | | | | | | | | |
| annual | <input type="text"/> | | | | | | | | | | | | |
| single event | x | | | | | | | | | | | | |
| Four single events (one for each day required samples were not taken) are recommended. | | | | | | | | | | | | | |

| | |
|---|---|
| Economic Benefit (EB) for this violation | Statutory Limit Test |
| Estimated EB Amount <input type="text" value="\$184"/> | Violation Final Penalty Total <input type="text" value="\$1,900"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,900"/> | |

Economic Benefit Worksheet

Respondent Leon Heijligers dba Center Point Dairy, LLP
Case ID No. 34458
Reg. Ent. Reference No. RN101917771
Media Water Quality
Violation No. 2

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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 | \$100 | 25-May-2007 | 1-Apr-2008 | 0.9 | \$4 | n/a | \$4 |
| 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 establish reporting procedures for the sampling events. The Date Required was the first day of documented discharge. The 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 | \$200 | 25-May-2007 | 1-Apr-2008 | 0.9 | \$9 | \$171 | \$180 |
| 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

Estimated cost to sample discharges (\$50 per sample per event) and provide analysis. The Date Required was the first day of documented discharge. The Final Date is the expected date of compliance.

Approx. Cost of Compliance

\$300

TOTAL

\$184

| | | | | |
|---|--|--|-------------------------------------|-------------------------------------|
| Screening Date 20-Aug-2007 | Docket No. 2007-1352-AGR-E | PCW | | |
| Respondent Leon Heijligers dba Center Point Dairy, LLP | | <i>Policy Revision 2 (September 2002)</i> | | |
| Case ID No. 34458 | | <i>PCW Revision June 26, 2007</i> | | |
| Reg. Ent. Reference No. RN101917771 | | | | |
| Media [Statute] Water Quality | | | | |
| Enf. Coordinator J. Craig Fleming | | | | |
| Violation Number | 3 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 321.31(a), and Tex. Water Code § 26.121(a) | | | |
| Violation Description | Failed to prevent the unauthorized discharge of wastewater from the operation of a CAFO, as documented May 25, 2007. | | | |
| | Base Penalty | \$10,000 | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | <input type="text"/> | <input type="text"/> | <input checked="" type="checkbox"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | 10% | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | 0% | |
| Matrix Notes | Human health or the environment has been 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 | \$9,000 | | |
| | | \$1,000 | | |
| Violation Events | | | | |
| | Number of Violation Events | 1 | 87 | 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 | \$1,000 |
| One quarterly event is recommended. | | | | |
| Economic Benefit (EB) for this violation | | | Statutory Limit Test | |
| | Estimated EB Amount | \$214 | Violation Final Penalty Total | \$950 |
| | | This violation Final Assessed Penalty (adjusted for limits) \$950 | | |

Economic Benefit Worksheet

Respondent Leon Heijlgers dba Center Point Dairy, LLP
Case ID No. 34458
Reg. Ent. Reference No. RN101917771
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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| 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 | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$5,000 | 25-May-2007 | 1-Apr-2008 | 0.9 | \$214 | n/a | \$214 |

Notes for DELAYED costs Estimated cost to prevent discharges from the CAFO operation. The Date Required was the first day of the documented discharges. The 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 NA

| | | | |
|-----------------------------------|---------|--------------|-------|
| Approx. Cost of Compliance | \$5,000 | TOTAL | \$214 |
|-----------------------------------|---------|--------------|-------|

Compliance History

Customer/Respondent/Owner-Operator: CN603280595 HEIJLIGERS, LEON Classification: HIGH Rating: 0.00
Regulated Entity: RN101917771 CENTER POINT DAIRY Classification: HIGH Site Rating: 0.00
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920161
Location: 6414 FM 2653 SOUTH, Hopkins County Rating Date: 9/1/2006 Repeat Violator: No
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: August 16, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 16, 2002 to August 16, 2007

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

Name: J. Craig Fleming Phone: (512) 239-5806

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? N
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? Leon Heijligers
4. If Yes, who was/were the prior owner(s)? Center Point Dairy Limited, L.P.
5. When did the change(s) in ownership occur? 9/28/2004

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 07/07/2004 (276798)
 - 2 07/07/2005 (396865)
 - 3 06/26/2006 (481568)
 - 4 11/21/2006 (531611)
 - 5 08/07/2007 (571106)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | | |
|--------------|---|----------|-------------------|
| Date: | 06/15/2007 | (562897) | |
| Self Report? | NO | | Classifi Moderate |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.39(b) | | |
| Description: | Failure to maintain the required capacity in the retention control structure to contain rainfall and rainfall runoff. | | |
| Self Report? | NO | | Classifi Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.46(d)(4) | | |
| Description: | Failure to maintain a log of all weekly wastewater levels observed in the retention control structure. | | |
| Self Report? | NO | | Classifi Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.38(e)(1) | | |
| Description: | Failure to design the retention control structure to minimize the entry of uncontaminated runoff. | | |
- 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
LEON HEIJLIGERS DBA CENTER
POINT DAIRY, LLP
RN101917771**

§
§
§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1352-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 Leon Heijligers dba Center Point Dairy, LLP ("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 at 6414 Farm-to-Market Road 2653 South, Hopkins County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 August 1, 2007.
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 Four Thousand Dollars (\$4,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Ten Dollars (\$210) of the administrative penalty and Eight Hundred Dollars (\$800) is deferred contingent upon the Respondent's timely and satisfactory compliance with all 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 Two Thousand Nine Hundred Ninety Dollars (\$2,990) of the administrative penalty shall be payable in 23 monthly payments of One Hundred Thirty Dollars (\$130) 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 maintain the retention control structure ("RCS") in compliance with the technical standards developed by the Natural Resources Conservation Service, in violation of 30 TEX. ADMIN. CODE § 321.38(e)(5) and (g)(2), as documented during the investigations conducted from June 11 through June 22, 2007. Specifically, RCSs built without spillways are required to have a minimum of two vertical feet between the top of the embankment and the required storage capacity, but it was observed to be without freeboard and wastewater breached the existing dam

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of the structure, and the dam on the northwest corner of the RCS visually appeared to be structurally compromised.

2. Failed to collect a sample and notify the appropriate regional office within 24 hours of the occurrence of a discharge, in violation of 30 TEX. ADMIN. CODE § 321.44(a), and Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920161, Parts III.A.5 and IV.B.5, as documented during an investigation conducted from June 11 through June 22, 2007. Specifically, it was determined that samples were not collected for the discharges nor were the discharges reported that occurred on May 25, 28, and 30, and June 12, 2007.
3. Failed to prevent the unauthorized discharge of wastewater from the operation of a CAFO, in violation of 30 TEX. ADMIN. CODE § 321.31(a), and TEX. WATER CODE § 26.121(a), as documented by photographs attached to an affidavit associated with a complaint received on June 11, 2007.

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: Leon Heijligers dba Center Point Dairy, LLP, Docket No. 2007-1352-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;
 - i. Repair the dam located on the northwest corner of the RCS to prevent future discharges;
 - ii. Begin ensuring that the RCS maintains a minimum of two vertical feet between the top of the embankment and the required storage capacity of the RCS, in accordance with 30 TEX. ADMIN. CODE § 321.38;

- iii. Establish a procedure whereby the regional office is notified orally within 24 hours and in writing within 14 working days of a discharge from the RCS structure or any component of the waste handling or land application system;
 - iv. Establish and implement a procedure whereby the required grab samples are collected within 30 minutes of the occurrence of a discharge, analyzed, and the results reported to the regional office, in accordance with the CAFO General Permit No. TXG920161; and
 - v. Establish and implement procedures whereby unauthorized discharges of wastewater from the CAFO are prevented, in accordance with 30 TEX. ADMIN. CODE § 321.31(a).
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

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

For the Executive Director

3/27/2008
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.

Signature

1-21-08
Date

LEON HEIJLIGERS
Name (Printed or typed)
Authorized Representative of
Leon Heijligers dba Center Point Dairy, LLC

Partner
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.

