

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-0144-IHW-E **TCEQ ID:** RN104306501 **CASE NO.:** 35278
RESPONDENT NAME: Pilgrim's Pride Corporation

| | | |
|---|---|--|
| 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 checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Pilgrim's Pride Corporation, 928 Martin Luther King Junior Boulevard, Nacogdoches, Nacogdoches County</p> <p>TYPE OF OPERATION: Process wastewater collection system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received November 15, 2007, concerning unknown material in a tributary to Lantana Creek. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Troy Penschorn, Director of Environmental Engineering, Pilgrim's Pride Corporation, P.O. Box 93, Pittsburg, Texas 75686 Mr. Greg Lisso, Vice President Corporate Engineering and Environmental Affairs, Pilgrim's Pride Corporation, P.O. Box 93, Pittsburg, Texas 75686 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: November 15, 2007</p> <p>Date of Investigation Relating to this Case: November 15, 2007</p> <p>Date of NOV/NOE Relating to this Case: January 9, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to prevent the unauthorized discharge of waste to any water in the state. Specifically, approximately 7,500 gallons of process wastewater discharged through two storm water outfalls on the morning of November 15, 2007. The wastewater flowed in a roadside ditch along Martin Luther King Junior Boulevard to a dry creek known as Lanana Creek where a dam was constructed to facilitate cleanup [30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to report an unauthorized discharge of process wastewater within 24 hours after the occurrence. Specifically, the November 15, 2007 discharge was not reported until January 15, 2008 [30 TEX. ADMIN. CODE § 327.3(b) and TEX. WATER CODE § 26.039(b)].</p> | <p>Total Assessed: \$2,000</p> <p>Total Deferred: \$400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,600</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 has implemented the following corrective measures at the Facility:</p> <p>a. Disinfected and completed cleanup of the affected area on November 16, 2007;</p> <p>b. Submitted a plan for preventing future discharges to the TCEQ regional office on January 3, 2008; and</p> <p>c. Submitted a spill notice and cleanup report to the TCEQ for the November 15, 2007 accidental discharge on January 15, 2008.</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, develop and begin implementing procedures for notifying the Commission of the location, volume, and content of all accidental discharges or spills within 24 hours; and</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): PST Registration 76430



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

| | | | | | | |
|--------------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 14-Jan-2008 | Screening | 23-Jan-2008 | EPA Due | |
| | PCW | 24-Jan-2008 | | | | |

| | |
|--|-----------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Pilgrim's Pride Corporation |
| Reg. Ent. Ref. No. | RN104306501 |
| Facility/Site Region | 10-Beaumont |
| Major/Minor Source | Minor |

| | | | | |
|-------------------------|-----------------|-------------------|--------------------|----------|
| CASE INFORMATION | | | | |
| Enf./Case ID No. | 35278 | No. of Violations | 2 | |
| Docket No. | 2008-0144-IHW-E | Order Type | 1660 | |
| Media Program(s) | Water Quality | Enf. Coordinator | Thomas Jecha | |
| 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 Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Reduction Subtotal 5

| | | |
|---------------|-------------------------------------|------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | <input type="text"/> | <input type="text"/> |
| Ordinary | <input type="text"/> | <input type="text"/> |
| N/A | <input checked="" type="checkbox"/> | (mark with x) |

Notes

Approx. Cost of Compliance Total EB Amounts 0% Enhancement* Subtotal 6
*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.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 23-Jan-2008

Docket No. 2008-0144-IHW-E

PCW

Respondent Pilgrim's Pride Corporation

Policy Revision 2 (September 2002)

Case ID No. 35278

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104306501

Media [Statute] Water Quality

Enf. Coordinator Thomas 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 | 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% |

Please Enter Yes or No

| | | | |
|-------|---|----|----|
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No NOVs or Agreed Orders were issued to this facility within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

| | | | | |
|---|---|--|--|---|
| Screening Date 23-Jan-2008 | Docket No. 2008-0144-IHW-E | PCW | | |
| Respondent Pilgrim's Pride Corporation | | <small>Policy Revision 2 (September 2002)</small> | | |
| Case ID No. 35278 | | <small>PCW Revision November 6, 2007</small> | | |
| Reg. Ent. Reference No. RN104306501 | | | | |
| Media [Statute] Water Quality | | | | |
| Enf. Coordinator Thomas Jecha | | | | |
| Violation Number <input type="text" value="1"/> | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 335.4 and Tex. Water Code § 26.121(a) | | | |
| Violation Description | Failed to prevent the unauthorized discharge of waste into any water in the state. Specifically, approximately 7,500 gallons of process wastewater discharged through two storm water outfalls on the morning of November 15, 2007. The wastewater flowed in a roadside ditch along Martin Luther King Junior Boulevard to a dry creek known as Lanana Creek where a dam was constructed to facilitate cleanup. | | | |
| | 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 checked="" type="text" value="x"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | <input type="text" value="10%"/> | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | <input type="text" value="0%"/> | |
| Matrix Notes | Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation. | | | |
| | Adjustment | <input type="text" value="\$9,000"/> | | |
| | | | <input type="text" value="\$1,000"/> | |
| Violation Events | | | | |
| | Number of Violation Events | <input type="text" value="1"/> | Number of violation days | |
| | | <input type="text" value="1"/> | | |
| <small>mark only one with an x</small> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$1,000"/> | |
| | monthly | <input type="text"/> | | |
| | quarterly | <input type="text"/> | | |
| | semiannual | <input type="text"/> | | |
| | annual | <input type="text"/> | | |
| | single event | <input checked="" type="text" value="x"/> | | |
| | One single event is recommended for the discharge on November 15, 2007. | | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount | <input type="text" value="\$1"/> | Violation Final Penalty Total | <input type="text" value="\$1,000"/> | |
| | | This violation Final Assessed Penalty (adjusted for limits) | <input type="text" value="\$1,000"/> | |

Economic Benefit Worksheet

Respondent Pilgrim's Pride Corporation
Case ID No. 35278
Reg. Ent. Reference No. RN104306501
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 | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | \$10,000 | 15-Nov-2007 | 16-Nov-2007 | 0.0 | \$1 | n/a | \$1 |

Notes for DELAYED costs

Estimated cost of cleanup from the date of the discharge until cleanup was completed.

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

\$1

| | | | | |
|---|--|--|--|----------------------|
| Screening Date 23-Jan-2008 | Docket No. 2008-0144-IHW-E | PCW | | |
| Respondent Pilgrim's Pride Corporation | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 35278 | <small>PCW Revision November 6, 2007</small> | | | |
| Reg. Ent. Reference No. RN104306501 | | | | |
| Media [Statute] Water Quality | | | | |
| Enf. Coordinator Thomas Jecha | | | | |
| Violation Number <input type="text" value="2"/> | | | | |
| Rule Cite(s) | <input type="text" value="30 Tex. Admin. Code § 327.3(b) and Tex. Water Code § 26.039(b)"/> | | | |
| Violation Description | <input type="text" value="Failed to report an unauthorized discharge of process wastewater within 24 hours after the occurrence. Specifically, the November 15, 2007 discharge was not reported until January 15, 2008."/> | | | |
| 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 type="text"/> |
| | | | Percent <input type="text" value="0%"/> | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | x | <input type="text"/> | <input type="text"/> |
| | | | Percent <input type="text" value="10%"/> | |
| Matrix Notes | <input type="text" value="100% of the rule requirement was not met."/> | | | |
| Adjustment | | | <input type="text" value="\$9,000"/> | |
| | | | <input type="text" value="\$1,000"/> | |
| Violation Events | | | | |
| Number of Violation Events <input type="text" value="1"/> | | Number of violation days <input type="text" value="61"/> | | |
| <small>mark only one with an x</small> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$1,000"/> | |
| | monthly | <input type="text"/> | | |
| | quarterly | <input type="text"/> | | |
| | semiannual | <input type="text"/> | | |
| | annual | <input type="text"/> | | |
| | single event | x | | |
| <input type="text" value="One single event is recommended."/> | | | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount <input type="text" value="\$1"/> | | Violation Final Penalty Total <input type="text" value="\$1,000"/> | | |
| | | This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/> | | |

Economic Benefit Worksheet

Respondent Pilgrim's Pride Corporation
Case ID No. 35278
Reg. Ent. Reference No. RN104306501
Media Water Quality
Violation No. 2

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

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

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) | \$100 | 15-Nov-2007 | 15-Jan-2008 | 0.2 | \$1 | n/a | \$1 |

Notes for DELAYED costs

Estimated cost to notify the TCEQ of an accidental discharge and report release and cleanup details from the date of the discharge 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

\$100

TOTAL

\$1

Compliance History

| | | | | |
|---|--|-----------------------------|--|-------------------|
| Customer/Respondent/Owner-Operator: | CN601276660 | Pilgrim's Pride Corporation | Classification: AVERAGE | Rating: 3.60 |
| Regulated | RN104306501 | PILGRIMS PRIDE CORPORATION | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | PETROLEUM STORAGE TANK | REGISTRATION | | 76430 |
| | REGISTRATION | | | |
| | STORMWATER | PERMIT | | TXR05P895 |
| | STORMWATER | PERMIT | | TXR05U391 |
| Location: | 928 MARTIN LUTHER KING JR BLVD, NACOGDOCHES, TX, 75961 | | Rating Date: September 01 07 Repeat Violator: NO | |
| TCEQ Region: | REGION 10 - BEAUMONT | | | |
| Date Compliance History Prepared | January 17, 2008 | | | |
| Agency Decision Requiring Compliance | Enforcement | | | |
| Compliance Period: | January 17, 2003 to January 17, 2008 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Thomas 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 | 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.)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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
PILGRIM'S PRIDE CORPORATION
RN104306501**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0144-IHW-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 Pilgrim's Pride Corporation ("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 process wastewater collection system at its poultry processing plant located at 928 Martin Luther King Junior Boulevard in Nacogdoches, Nacogdoches County, Texas (the "Facility").
2. The Respondent discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 14, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Dollars (\$2,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent

has paid One Thousand Six Hundred Dollars (\$1,600) of the administrative penalty and Four Hundred Dollars (\$400) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Disinfected and completed cleanup of the affected area on November 16, 2007;
 - b. Submitted a plan for preventing future discharges to the TCEQ regional office on January 3, 2008; and
 - c. Submitted a spill notice and cleanup report to the TCEQ for the November 15, 2007 accidental discharge on January 15, 2008.
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 the Respondent 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, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of waste to any water in the state, in violation of 30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on November 15, 2007. Specifically, approximately 7,500 gallons of process wastewater discharged through two storm water outfalls on the morning of November 15, 2007. The wastewater flowed in a roadside ditch along Martin Luther King Junior Boulevard to a dry creek known as Lanana Creek where a dam was constructed to facilitate cleanup.

2. Failed to report an unauthorized discharge of process wastewater within 24 hours after the occurrence, in violation of 30 TEX. ADMIN. CODE § 327.3(b) and TEX. WATER CODE § 26.039(b), as documented during an investigation conducted on November 15, 2007: Specifically, the November 15, 2007 discharge was not reported until January 15, 2008.

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: Pilgrim's Pride Corporation, Docket No. 2008-0144-IHW-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, develop and begin implementing procedures for notifying the Commission of the location, volume, and content of all accidental discharges or spills within 24 hours; and
 - 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

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

7/2/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

4/17/08
Date

Greg Lisso
Name (Printed or typed)
Authorized Representative of
Pilgrim's Pride Corporation

Vice President Corporate Engineering and
Title Environmental Affairs

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.



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