

CAPTION: Docket No. 2008-0405-AGR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Salvador G. Gonzalez dba Gonzalez Dairy in Tom Green County; RN101961753; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Thomas Jecha, Bryan Sinclair)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2008-0405-AGR-E **TCEQ ID:** RN101961753 **CASE NO.:** 35509
RESPONDENT NAME: Salvador G. Gonzalez dba Gonzalez 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 type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input checked="" type="checkbox"/> AGRICULTURE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Gonzalez Dairy, 7842 Duckworth Road, Tom Green County</p> <p>TYPE OF OPERATION: Dairy farm</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility 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 August 4, 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. Salvador G. Gonzalez, Owner, Gonzalez Dairy, 7842 Duckworth, San Angelo, Texas 76905 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 type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 11, 2008</p> <p>Date of NOE Relating to this Case: February 21, 2008 (NOE)</p> <p>Background Facts: This was a follow-up investigation.</p> <p>WATER</p> <p>1) Failure to ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner. Specifically, the double pond RCS is not protected from animal intrusion by a fence and trees are growing on the embankment and in the interior of the single pond RCS. Also, the dividing embankment and exterior embankments of the double pond RCS have been damaged by excavation and erosion [30 TEX. ADMIN. CODE § 321.47(e)(7)].</p> <p>2) Failure to maintain a permanent RCS pond marker. Specifically, the north section of the double pond RCS and the single pond RCS do not have pond markers and the pond marker in the south section of the double pond RCS was not marked to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event [30 TEX. ADMIN. CODE § 321.47(e)(6)].</p> <p>3) Failure to provide documentation of sources of information, assumptions, and calculations, used in determining the appropriate volume capacity of the RCS. Specifically, no capacity information was available for the single pond RCS [30 TEX. ADMIN. CODE § 321.38(e)(7)].</p>	<p>Total Assessed: \$5,775</p> <p>Total Deferred: \$1,155 <input 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: \$140 (remaining \$4,480 due in 35 monthly payments of \$128 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>1) The Executive Director recognizes that the Respondent removed trees and brush from around the single pond RCS as documented in a letter dated March 6, 2008.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 15 days after the effective date of this Agreed Order, develop and begin implementing improved record keeping procedures to ensure that all required records are maintained;</p> <p>b) Within 30 days after the effective date of this Agreed Order:</p> <p>i. Begin maintaining documentation of sources of information, assumptions, and calculations, used in determining the appropriate volume capacity of the single pond RCS; and</p> <p>ii. Install markers to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all RCS ponds.</p> <p>c) Within 60 days after the effective date of this Agreed Order, construct and manage control facilities to ensure that all wastewater runoff from the feed lanes and confinement pens drains into a RCS;</p> <p>d) Within 90 days after the effective date of this Agreed Order, construct fences or other protective devices to ensure the double pond RCS is protected from animal intrusion and repair damage to the exterior and dividing embankments caused by excavations and erosion;</p> <p>e) Within 120 days after the effective date of this Agreed Order, obtain certification of a licensed Texas Profession engineer,</p>

<p>4) Failure to comply with record keeping requirements. Specifically, required records are not being maintained [30 TEX. ADMIN. CODE § 321.47(i)].</p> <p>5) Failure to construct and manage the control facilities in a manner that will protect surface water. Specifically, wastewater runoff from a portion of the feed lanes and confinement pens does not drain into a RCS [30 TEX. ADMIN. CODE § 321.47(c)(1)].</p>		<p>signed and sealed in accordance with the requirements of the Texas State Board of Professional Engineers, to show that modifications to the construction and design of the double pond RCS meet the current technical standards developed by the Natural Resources Conservation Service; and</p> <p>f) Within 135 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 Nos. 2.a. through 2.e.</p>
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Additional ID No(s): None



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision January 29, 2008

DATES	Assigned	25-Feb-2008	Screening	7-Mar-2008	EPA Due	
	PCW	7-Mar-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Salvador G. Gonzalez dba Gonzalez Dairy
Reg. Ent. Ref. No.	RN101961753
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35509	No. of Violations	5	
Docket No.	2008-0405-AGR-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	\$5,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$275
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Notes: Enhancement for one NOV with same or similar violations issued to this facility within the past five years.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Subtotal 6	0% Enhancement*	\$0
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Total EB Amounts	\$457	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,150	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,775
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$5,775
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,775
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DEFERRAL	20%	Reduction	Adjustment	-\$1,155
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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	\$4,620
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Screening Date 7-Mar-2008

Docket No. 2008-0405-AGR-E

PCW

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No. 35509

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101961753

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 (<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%
<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)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations issued to this facility within the past five years.

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

Screening Date	7-Mar-2008	Docket No.	2008-0405-AGR-E	PCW
Respondent	Salvador G. Gonzalez dba Gonzalez Dairy			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35509			<i>PCW Revision January 29, 2008</i>
Reg. Ent. Reference No.	RN101961753			
Media [Statute]	Water Quality			
Enf. Coordinator	Thomas Jecha			

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 321.47(e)(7)
Violation Description	Failed to ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner. Specifically, the double pond RCS is not protected from animal intrusion by a fence and trees are growing on the embankment and in the interior of the single pond RCS. Also, the dividing embankment and exterior embankments of the double pond RCS have been damaged by excavation and erosion.
Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual			
	Potential	x		Percent <input type="text" value="10%"/>

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification				Percent <input type="text" value="0%"/>

Matrix Notes

Human health or the environment could be exposed to significant amounts of pollutants as a result of the violation.

Adjustment

\$1,000

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	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

A total of two quarterly events, one for each RCS, are recommended from the February 11, 2008 investigation until the March 7, 2008 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$359"/>	Violation Final Penalty Total <input type="text" value="\$2,100"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,100"/>	

Economic Benefit Worksheet

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No.: 35509
Reg. Ent. Reference No.: RN101961753
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)	\$7,500	11-Feb-2008	25-Jan-2009	1.0	\$359	n/a	\$359

Notes for DELAYED costs: Estimated cost to erect a fence, remove trees, and repair structural damage to the embankments of the RCSs and obtain certification by a Texas Professional Engineer that they meet the structural standards developed by the Natural Resources Conservation Service. The date required is the investigation date and 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:

Approx. Cost of Compliance

\$7,500

TOTAL

\$359

Screening Date 7-Mar-2008	Docket No. 2008-0405-AGR-E	PCW
Respondent Salvador G. Gonzalez dba Gonzalez Dairy		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35509		<i>PCW Revision January 29, 2008</i>
Reg. Ent. Reference No. RN101961753		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> 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" 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

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 type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

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: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No.: 35509
Reg. Ent. Reference No.: RN101961753
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				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)	\$200	11-Feb-2008	27-Oct-2008	0.7	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to install two properly marked pond markers. The date required is the investigation date and 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

Approx. Cost of Compliance

\$200

TOTAL

\$7

Screening Date 7-Mar-2008	Docket No. 2008-0405-AGR-E	PCW
Respondent Salvador G. Gonzalez dba Gonzalez Dairy		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35509		<i>PCW Revision January 29, 2008</i>
Reg. Ent. Reference No. RN101961753		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number	<input type="text" value="3"/>	
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 321.38(e)(7)"/>	
Violation Description	<input type="text" value="Failed to provide documentation of sources of information, assumptions, and calculations, used in determining the appropriate volume capacity of the RCS. Specifically, no capacity information was available for the single pond RCS."/>	
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"/>	<input type="text" value="x"/>	<input type="text"/>		<input type="text"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="25"/>	Number of violation days												
mark only one with an x <table border="1" style="margin-left: 20px;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text" value="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	<input type="text" value="x"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text" value="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="\$7"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No.: 35509
Reg. Ent. Reference No.: RN101961753
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)	\$200	11-Feb-2008	27-Oct-2008	0.7	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to obtain a capacity estimate for the single pond RCS. The date required is the investigation date and 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

Approx. Cost of Compliance

\$200

TOTAL

\$7

Screening Date 7-Mar-2008	Docket No. 2008-0405-AGR-E	PCW
Respondent Salvador G. Gonzalez dba Gonzalez Dairy	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35509	<small>PCW Revision January 29, 2008</small>	
Reg. Ent. Reference No. RN101961753		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number	4	
Rule Cite(s)	30 Tex. Admin. Code § 321.47(i)	
Violation Description	Failed to comply with record keeping requirements. Specifically, required records are not being maintained.	
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"/>	<input type="text"/>	<input type="text"/>	Percent <input style="width:50px;" type="text" value="0%"/>

>> Programmatic Matrix

	Falsification				
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
	Matrix Notes	100% of the rule requirement was not met.			Percent <input style="width:50px;" type="text" value="10%"/>

Adjustment

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	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

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input style="width:150px;" type="text" value="\$25"/>	Violation Final Penalty Total <input style="width:100px;" type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input style="width:100px;" type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No. 35509
Reg. Ent. Reference No. RN101961753
Media: Water Quality
Violation No. 4

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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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)	\$750	11-Feb-2008	12-Oct-2008	0.7	\$25	n/a	\$25

Notes for DELAYED costs
 Estimated cost for recording information and maintaining records. The date required is the investigation date and 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

Approx. Cost of Compliance	\$750	TOTAL	\$25
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Screening Date	7-Mar-2008	Docket No.	2008-0405-AGR-E	PCW
Respondent	Salvador G. Gonzalez dba Gonzalez Dairy			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35509			<i>PCW Revision January 29, 2008</i>
Reg. Ent. Reference No.	RN101961753			
Media [Statute]	Water Quality			
Enf. Coordinator	Thomas Jecha			

Violation Number

Rule Cite(s)

Violation Description Failed to construct and manage the control facilities in a manner that will protect surface water. Specifically, wastewater runoff from a portion of the feed lanes and confinement pens does not drain into a RCS.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="5%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes Human health or the environment could be exposed to insignificant amounts of pollutants as a result of the violation.

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 type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text" value="x"/>

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: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No.: 35509
Reg. Ent. Reference No.: RN101961753
Media: Water Quality
Violation No.: 5

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)	\$1,500	11-Feb-2008	26-Nov-2008	0.8	\$59	n/a	\$59

Notes for DELAYED costs

Estimated cost to construct control facilities for the feed lanes and confinement pens. The date required is the investigation date and 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

Approx. Cost of Compliance

\$1,500

TOTAL

\$59

irrigation.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(e)(7)		
Description:	Failure to adequately maintain and protect the liners and embankments of the three retention control structure's (RCS) against animal intrusion, tree growth and mechanical or structural damage in accordance with these requirements.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(f)(2) 30 TAC Chapter 321, SubChapter B 321.47(f)(3)		
Description:	Failure to demonstrate compliance by providing documentation to show how liquid and solid wastes are beneficially used in accordance with the conditions of this subsection.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(f)(11)		
Description:	Failure to demonstrate compliance by adequately collecting, and submit for testing at least one representative sample of irrigation wastewater, and one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium and providing documentation of the laboratory analysis.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(g)(1) 30 TAC Chapter 321, SubChapter B 321.47(g)(2)		
Description:	Failure to demonstrate soil sampling and testing by providing documentation of the initial and annual soil samples collected prior to land applying liquid and solid wastes in accordance with the conditions of this subsection.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(i)(1) 30 TAC Chapter 321, SubChapter B 321.47(i)(2) 30 TAC Chapter 321, SubChapter B 321.47(i)(3)		
Description:	Failure to maintain the record keeping activities applicable of an AFO operator who uses a control facility to manage manure, litter and/or wastewater generated on site.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(c)(1)		
Description:	Failure to manage the control facilities and land management units (LMUs) in the manner to protect surface and ground water quality.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.47(c)(2)		
Description:	Failure to properly operate and maintain the site to prevent nuisance conditions and minimize odors on site.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 335, SubChapter A 335.4		
Description:	Failure to prevent the discharge or imminent threat of discharge of industrial solid waste into the environment.		

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
SALVADOR G. GONZALEZ DBA
GONZALEZ DAIRY
RN101961753**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-0405-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 Salvador G. Gonzalez dba Gonzalez Dairy ("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 farm at 7842 Duckworth Road in Tom Green County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of 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 February 26, 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 Five Thousand Seven Hundred Seventy-Five Dollars (\$5,775) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Forty Dollars (\$140) of the administrative penalty and One Thousand One Hundred Fifty-Five Dollars (\$1,155) 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, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Four Hundred Eighty Dollars (\$4,480) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Twenty-Eight Dollars (\$128) 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 recognizes that the Respondent removed trees and brush from around the single pond Retention Control Structure (RCS) as documented in a letter dated March 6, 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 ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(7), as documented during an investigation conducted on February 11, 2008. Specifically, the double pond RCS is not protected from animal intrusion by a fence and trees are growing on the embankment and in the interior of the single pond RCS. Also, the dividing embankment and exterior embankments have been damaged by excavations and erosion.
2. Failed to maintain a permanent RCS pond marker, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(6), as documented during an investigation conducted on February 11, 2008. Specifically, the north section of the double pond RCS and the single pond RCS do not have pond markers and the pond marker in the south section of the double pond RCS was not marked to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event.
3. Failed to provide documentation of sources of information, assumptions, and calculations, used in determining the appropriate volume capacity of the RCS, in violation of 30 TEX. ADMIN. CODE § 321.38(e)(7), as documented during an investigation conducted on February 11, 2008. Specifically, no capacity information was available for the single pond RCS.
4. Failed to comply with record keeping requirements, in violation of 30 TEX. ADMIN. CODE § 321.47(i), as documented during an investigation conducted on February 11, 2008. Specifically, required records are not being maintained.
5. Failed to construct and manage the control facilities in a manner that will protect surface water, in violation of 30 TEX. ADMIN. CODE § 321.47(c)(1), as documented during an investigation conducted on February 11, 2008. Specifically, wastewater runoff from a portion of the feed lanes and confinement pens does not drain into a RCS.

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: Salvador G. Gonzalez dba Gonzalez Dairy, Docket No. 2008-0405-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 15 days after the effective date of this Agreed Order, develop and begin implementing improved record keeping procedures to ensure that all required records are maintained, in accordance with 30 TEX. ADMIN. CODE § 321.47(i);
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Begin maintaining documentation of sources of information, assumptions, and calculations, used in determining the appropriate volume capacity of the single pond RCS; and
 - ii. Install markers to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all RCS ponds;
 - c. Within 60 days after the effective date of this Agreed Order, construct and manage control facilities to ensure that all wastewater runoff from the feed lanes and confinement pens drains into a RCS;
 - d. Within 90 days after the effective date of this Agreed Order, construct fences or other protective devices to ensure the double pond RCS is protected from animal intrusion and repair damage to the exterior and dividing embankments caused by excavations and erosion;
 - e. Within 120 days after the effective date of this Agreed Order, obtain certification of a licensed Texas professional engineer, signed and sealed in accordance with the requirements of the Texas State Board of Professional Engineers, to show that modifications to the construction and design of the double pond RCS meet the current technical standards developed by the Natural Resources Conservation Service; and
 - f. Within 135 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(s). 2.a. through 2.e. 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 fines 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:

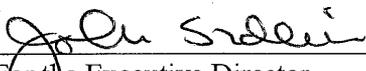
Water Section, Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

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

8/8/2008

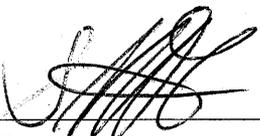
Date

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

5-23-08

Date

SALVADOR G. GONZALEZ

Name (Printed or typed)

OWNER

Title

Authorized Representative of
Salvador G. Gonzalez dba Gonzalez Dairy

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.

