EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0683-MLM-E **TCEQ ID:** RN101516631 **CASE NO.:** 35783

RESPONDENT NAME: Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	X MULTI-MEDIA (check all that apply)	X INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 5 Star Dairy, 1052 United States Highway 84, Amherst, Lamb County

TYPE OF OPERATION: Concentrated animal feeding operation

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received March 24, 2008, alleging that the four trailer house residence septic systems located on the eastern portion of the dairy near Highway 84 were malfunctioning. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 24, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Kornelis Wilt Vanderlei and Mrs. Piertsje Deboer Vanderlei, Owners, 5 Star Dairy, 1054 United States Highway 84, Amherst, Texas 79312
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** March 24, 2008 **Date of Investigation Relating to this Case:** March 25, 2008 **Date of NOV/NOE Relating to this Case:** April 16, 2008 (NOE) **Background Facts:** This was a complaint investigation. **WATER** 1) Failure to prevent an unauthorized discharge from an on-site sewage facility ("OSSF"). Specifically, during the March 25, 2008 investigation it was noted that two separate OSSFs had failed and that human bio-solids and other sewage waste had accumulated and pooled on the ground surface [TEX. WATER CODE § 26.121(a)(1)]. 2) Failure to provide adequate wellhead protective measures. Specifically, the well located in land management unit ("LMU") # 1 was not equipped with a structure to prevent irrigation of wastewater directly over the wellhead [30 TEX. ADMIN. CODE § 321.40(g) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.4.(c)]. 3) Failure to properly collect carcasses within 24 hours of death and properly dispose of them within three days of death [30 TEX. ADMIN. CODE § 321.36(l) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.10.(c)]. **WASTE** 4) Failure to provide notification of industrial solid waste storage, processing, or disposal. Specifically, industrial,	**Total Assessed:** $3,080 **Total Deferred:** $616 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $1,232 **Total Paid to General Revenue:** $1,232 **Site Compliance History Classification** _X_ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that by April 2, 2008, the Respondents have implemented the following corrective measures at the Facility: a. Pumped the affected area and cleaned up the remaining waste from the unauthorized discharge; b. Provided adequate wellhead protective measures by covering the wellhead; c. Properly disposed of all carcasses on the property; and d. Permanently ceased the storage, processing, and disposal of industrial solid waste and properly disposed of all remaining waste. **Ordering Provisions:** 1) The Order will require the Respondents to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A) 2) The Order will also require the Respondents to: a. Within 15 days after the effective date of this Agreed Order, repair the two OSSFs at the Facility; and b. Within 30 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 No. 2.a.

domestic, and agricultural waste was noted in an open excavation west of the dairy pens which included such materials as a paint can, plastic tarps, a plastic 55-gallon drum, wooden pallets, crop residue, and PVC piping. No notification was submitted for this on-site waste disposal [30 TEX. ADMIN. CODE § 335.6(a)].		

Additional ID No(s).: TXG920043

Attachment A
Docket Number: 2008-0683-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents:	**Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy**
Payable Penalty Amount:	**Two Thousand Four Hundred Sixty-Four Dollars ($2,464)**
SEP Amount:	**One Thousand Two Hundred Thirty-Two Dollars ($1,232)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up**
Location of SEP:	**Lamb County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondents to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certify that there are no prior commitments to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondents shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondents must contribute the SEP Amount to the Third-Party Recipient. The Respondents shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondents shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondents shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondents do not perform their obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondents must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondents shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondents may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondents under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision March 8, 2008*

TCEQ

DATES					
Assigned	22-Apr-2008				
PCW	24-Apr-2008	Screening	23-Apr-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy		
Reg. Ent. Ref. No.	RN101516631		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35783	No. of Violations	1
Docket No.	2008-0683-MLM-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media	Industrial and Hazardous Waste	EC's Team	Enforcement Team 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 2% Enhancement — *Subtotals 2, 3, & 7* $10

Notes: The Respondents were issued one NOV without the same/similar type of violations.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

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

Notes: The Respondents do not meet the good faith effort criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$134
Approx. Cost of Compliance	$3,500

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $510

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $510

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $510

DEFERRAL — 20% Reduction — *Adjustment* -$102

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $408

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E

PCW

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei db

Policy Revision 2 (September 2002)

Case ID No. 35783

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101516631

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jorge Ibarra, P.E.

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	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) 2%

>> 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

The Respondents were issued one NOV without the same/similar type of violations.

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

PCW

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star

Case ID No. 35783

Reg. Ent. Reference No. RN101516631

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description Failed to prevent an unauthorized discharge from an on-site sewage facility ("OSSF"). Specifically, during the March 25, 2008 investigation it was noted that two separate OSSFs had failed and that human bio-solids and other sewage waste had accumulated and pooled on the ground surface.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment $2,250

$250

Violation Events

Number of Violation Events 2

29 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $500

Two quarterly events are recommended (one event tor each OSSF). The penalty was calculated from investigation date of March 25, 2008 to screening date of April 23, 2008.

Economic Benefit (EB) for this violation

Estimated EB Amount $134

Statutory Limit Test

Violation Final Penalty Total $510

This violation Final Assessed Penalty (adjusted for limits) $510

Economic Benefit Worksheet

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy
Case ID No. 35783
Reg. Ent. Reference No. RN101516631
Media On-Site Sewage Disposal
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$1,000	25-Mar-2008	1-Dec-2008	0.7	$2	$46	$48
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$2,500	25-Mar-2008	1-Dec-2008	0.7	$86	n/a	$86
Notes for DELAYED costs	Estimated cost to pump the affected and to clean-up the remaining waste from the unauthorized discharge. Date Required is the investigation date, Final Date is the expected compliance date.						
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	$3,500	TOTAL	$134

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision March 8, 2008*

TCEQ

DATES					
Assigned	22-Apr-2008				
PCW	24-Apr-2008	Screening	23-Apr-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy		
Reg. Ent. Ref. No.	RN101516631		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35783	No. of Violations	1
Docket No.	2008-0683-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media	On-Site Sewage Disposal	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* — $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 2% Enhancement — *Subtotals 2, 3, & 7* — $20

Notes: The Respondents were issued one NOV without the same/similar type of violations.

Culpability — No — 0% Enhancement — *Subtotal 4* — $0

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply — 25% Reduction — *Subtotal 5* — $250

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

Notes: The Respondents achieved full compliance on April 2, 2008.

0% Enhancement* — *Subtotal 6* — $0

Total EB Amounts	$200
Approx. Cost of Compliance	$200

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* — $770

OTHER FACTORS AS JUSTICE MAY REQUIRE — 26% — *Adjustment* — $200

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: An upward penalty adjustment recommended to capture the avoided cost associated with the violation.

Final Penalty Amount — $970

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* — $970

DEFERRAL — 20% Reduction — *Adjustment* — -$194

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY — $776

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E

PCW

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei db

Policy Revision 2 (September 2002)

Case ID No. 35783

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101516631

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Jorge Ibarra, P.E.

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	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) 2%

>> 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

The Respondents were issued one NOV without the same/similar type of violations.

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

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E **PCW**

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star *Policy Revision 2 (September 2002)*

Case ID No. 35783 *PCW Revision March 8, 2008*

Reg. Ent. Reference No. RN101516631

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.6(a)

Violation Description Failed to provide notification of industrial solid waste storage, processing or disposal, as documented during an investigation on March 25, 2008. Specifically, industrial, domestic, and agricultural waste was noted in an open excavation west of the dairy pens which included such materials as paint can, plastic tarps, a plastic 55-gallon drum, wooden pallets, crop residue, and PVC piping. No notification was submitted for this on-site disposal.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 8 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation — Statutory Limit Test

Estimated EB Amount $200 **Violation Final Penalty Total** $970

This violation Final Assessed Penalty (adjusted for limits) $970

Economic Benefit Worksheet

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy
Case ID No. 35783
Reg. Ent. Reference No. RN101516631
Media Industrial and Hazardous Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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)				0.0	$0	n/a	$0
Notes for DELAYED costs							
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]	$200	25-Mar-2008	2-Apr-2008	0.0	$0	$200	$200
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated avoided cost for not preparing and submitting notification to the TCEQ of the storing, processing, and disposal of industrial hazardous waste on-site. The Required Date is the day of the investigation and the Final Date is the day that the waste was properly disposed of and the activity permanently ceased.						

Approx. Cost of Compliance $200

TOTAL $200

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision March 8, 2008*

DATES					
Assigned	22-Apr-2008				
PCW	24-Apr-2008	Screening	23-Apr-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy		
Reg. Ent. Ref. No.	RN101516631		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35783	No. of Violations	2
Docket No.	2008-0683-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media	Industrial and Hazardous Waste	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* — $2,000

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* — $100

Notes: The Respondents were issued one NOV with the same/similar type of violations.

Culpability — No — 0% Enhancement — *Subtotal 4* — $0

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply — 25% Reduction — *Subtotal 5* — $500

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

Notes: The Respondents achieved full compliance on April 2, 2008.

0% Enhancement* — *Subtotal 6* — $0

Total EB Amounts	$1
Approx. Cost of Compliance	$1,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* — $1,600

OTHER FACTORS AS JUSTICE MAY REQUIRE — 0% — *Adjustment* — $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount — $1,600

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* — $1,600

DEFERRAL — 20% Reduction — *Adjustment* — -$320

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY — $1,280

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E

PCW

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei db

Policy Revision 2 (September 2002)

Case ID No. 35783

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101516631

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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*)	1	5%
	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 judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	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) 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

The Respondents were issued one NOV with the same/similar type of violations.

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

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E **PCW**

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star *Policy Revision 2 (September 2002)*

Case ID No. 35783 *PCW Revision March 8, 2008*

Reg. Ent. Reference No. RN101516631

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.40(g) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.4.(c)

Violation Description Failed to provide adequate wellhead protective measures. Specifically, the well located in land management unit ("LMU") # 1 was not equipped with a structure to prevent irrigation of wastewater directly over the wellhead.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment 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 — 8 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the March 25, 2008 investigation date to the April 2, 2008 compliance date.

Economic Benefit (EB) for this violation — Statutory Limit Test

Estimated EB Amount $1 **Violation Final Penalty Total** $800

This violation Final Assessed Penalty (adjusted for limits) $800

Economic Benefit Worksheet

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy
Case ID No. 35783
Reg. Ent. Reference No. RN101516631
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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)	$500	25-Mar-2008	2-Apr-2008	0.0	$1	n/a	$1

Notes for DELAYED costs: Estimated cost to provide adequate wellhead protective measures. Date Required is the investigation date, Final Date is the compliance date.

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: $500

TOTAL: $1

Screening Date 23-Apr-2008 **Docket No.** 2008-0683-MLM-E **PCW**

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star D

Policy Revision 2 (September 2002)

Case ID No. 35783

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN101516631

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 321.36(l) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.10.(c)

Violation Description Failed to collect carcasses within 24 hours of death and properly dispose of them within three days of death.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment 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

8 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the March 25, 2008 investigation date to the April 2, 2008 compliance date.

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $800

This violation Final Assessed Penalty (adjusted for limits) $800

Economic Benefit Worksheet

Respondent Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy
Case ID No. 35783
Reg. Ent. Reference No. RN101516631
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	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	$500	25-Mar-2008	2-Apr-2008	0.0	$1	n/a	$1
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to properly dispose of carcasses. Date Required is the investigation date, Final Date is the compliance date.						
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: $500

TOTAL: $1

Compliance History

Customer/Respondent/Owner-Operator:	CN602852295	PIERTSJE DEBOER VANDERLEI	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101516631	5 STAR DAIRY	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER AGRICULTURE	PERMIT		TXG920043
Location:	1052 US HIGHWAY 84, AMHERST, TX, 79312		Rating Date: 9/1/2007	Repeat Violator: NO

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: May 12, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 23, 2003 to April 23, 2008

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/07/2003 (254534)
2 12/09/2003 (257299)
3 03/09/2005 (373494)
4 05/03/2006 (459835)
5 11/30/2006 (519540)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/25/2008 (618973)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.39(c)(2)
Rqmt Prov: PERMIT Part IV.B.3
Description: Failure to notify the regional office in writing when RCS cleaning is scheduled.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.40(g)
Rqmt Prov: PERMIT Part III.A.4.(c)
Description: Failure to provide appropriate wellhead protection.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN602656803	KORNELIS WILT VANDERLEI	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101516631	5 STAR DAIRY	Classification: HIGH	Site Rating: 0.00

ID Number(s):	WASTEWATER AGRICULTURE	PERMIT	TXG920043
Location:	1052 US HIGHWAY 84, AMHERST, TX, 79312	Rating Date: 9/1/2007	Repeat Violator: NO

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: May 12, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 23, 2003 to April 23, 2008

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 11/07/2003 (254534)
2 12/09/2003 (257299)
3 03/09/2005 (373494)
4 05/03/2006 (459835)
5 11/30/2006 (519540)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/25/2008 (618973)
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Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.40(g)
Rqmt Prov: PERMIT Part III.A.4.(c)
Description: Failure to provide appropriate wellhead protection.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
PIERTSJE DEBOER VANDERLEI	§	**TEXAS COMMISSION ON**
AND KORNELIS WILT VANDERLEI	§	
DBA 5 STAR DAIRY	§	
RN101516631	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0683-MLM-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 Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy ("the Respondents") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 366 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a concentrated animal feeding operation at 1052 United States Highway 84 in Amherst, Lamb County, Texas (the "Facility").

2. The TCEQ has general authority concerning the location, design, construction, installation, and proper functioning of an on-site sewage facility ('OSSF") pursuant to TEX. HEALTH & SAFETY CODE ch. 366.

3. The Respondents have 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.

4. The Facility involves the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

5. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.

6. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about April 21, 2008.

7. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

8. An administrative penalty in the amount of Three Thousand Eighty Dollars ($3,080) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Two Hundred Thirty-Two Dollars ($1,232) of the administrative penalty and Six Hundred Sixteen Dollars ($616) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty. One Thousand Two Hundred Thirty-Two Dollars ($1,232) shall be conditionally offset by the Respondents' completion of a Supplemental Environmental Project ("SEP").

9. 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.

10. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

11. The Executive Director recognizes that by April 2, 2008, the Respondents have implemented the following corrective measures at the Facility:

    a. Pumped the affected area and cleaned-up the remaining waste from the unauthorized discharge;

    b. Provided adequate wellhead protective measures by covering the wellhead;

    c. Properly disposed of all carcasses on the property; and

    d. Permanently ceased the storage, processing, and disposal of industrial solid waste and properly disposed of all remaining waste.

12. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.

13. 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.

14. 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 owners and operators of the Facility, the Respondents are alleged to have:

1. Failed to prevent an unauthorized discharge from an OSSF, in violation of TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on March 25, 2008. Specifically, during the March 25, 2008 investigation it was noted that two separate OSSFs had failed and that human bio-solids and other sewage waste had accumulated and pooled on the ground surface.

2. Failed to provide adequate wellhead protective measures, in violation of 30 TEX. ADMIN. CODE § 321.40(g) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.4.(c), as documented during an investigation conducted on March 25, 2008. Specifically, the well located in land management unit ("LMU") # 1 was not equipped with a structure to prevent irrigation of wastewater directly over the wellhead.

3. Failed to properly collect carcasses within 24 hours of death and properly dispose of them within three days of death, in violation of 30 TEX. ADMIN. CODE § 321.36(l) and Permit No. TXG920000, Pollution Prevention Plan Requirements, Part III.A.10.(c), as documented during an investigation conducted on March 25, 2008.

4. Failed to provide notification of industrial solid waste storage, processing or disposal, in violation of 30 TEX. ADMIN. CODE § 335.6(a), as documented during an investigation conducted on March 25, 2008. Specifically, industrial, domestic, and agricultural waste was noted in an open excavation west of the dairy pens which included such materials as paint can, plastic tarps, a plastic 55-gallon drum, wooden pallets, crop residue, and PVC piping. No notification was submitted for this on-site waste disposal.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 8 above. The payment of this administrative penalty and the Respondents' 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: Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy, Docket No. 2008-0683-MLM-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. Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei, the Respondents, are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. The Respondents shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 8 above, One Thousand Two Hundred Thirty-Two Dollars ($1,232) of the assessed administrative penalty shall be offset with the condition that the Respondents implement the SEP defined in Attachment A, incorporated herein by reference. The Respondents' obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

4. It is further ordered that the Respondents shall undertake the following technical requirements:

   a. Within 15 days after the effective date of this Agreed Order, repair the two OSSFs at the Facility, in accordance with 30 TEX. ADMIN. CODE ch. 285; and

   b. Within 30 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. 4.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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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
      Lubbock Regional Office
      Texas Commission on Environmental Quality
      5012 50th Street, Suite 100
      Lubbock, Texas 79414-3421

5. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.

6. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.

9. 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.

10. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

Date 12/8/08

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

Date 7-21-2008

Piertsje Vanderlei deBoer

Name (Printed or typed)
Authorized Representative of
Piertsje Deboer Vanderlei dba 5 Star Dairy

Owner

Title

Signature

Date 7-21-08

Kornelis Wilt Vanderlei

Name (Printed or typed)
Authorized Representative of
Kornelis Wilt Vanderlei dba 5 Star Dairy

Owner

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2008-0683-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents:	**Piertsje Deboer Vanderlei and Kornelis Wilt Vanderlei dba 5 Star Dairy**
Payable Penalty Amount:	**Two Thousand Four Hundred Sixty-Four Dollars ($2,464)**
SEP Amount:	**One Thousand Two Hundred Thirty-Two Dollars ($1,232)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up**
Location of SEP:	**Lamb County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondents to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondents shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondents certify that there are no prior commitments to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondents shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondents must contribute the SEP Amount to the Third-Party Recipient. The Respondents shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondents shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondents shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondents do not perform their obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondents shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondents must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondents shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondents may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondents under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.