

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1020-AGR-E TCEQ ID: RN104479043 CASE NO.: 36125**

**RESPONDENT NAME: Jon Klemme dba Klemme Dairy**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Klemme Dairy, located on the west side of County Road 22, approximately two miles north of the intersection of State Highway 281 and County Road 22, Hutchinson County</p> <p><b>TYPE OF OPERATION:</b> Confined animal feeding operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 22, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Jon Klemme, Owner, Klemme Dairy, 10269 County Road B, Spearman, Texas 79081  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 13, 2008 through May 23, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 29, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to roof, cover with an impermeable material, or berm the manure and dead animal composting area. Specifically, the investigator documented a composting pile that was not covered, roofed, or protected from external rainfall and was located outside of the drainage area of retention control structure ("RCS") No. 2 [30 TEX. ADMIN. CODE § 321.39(f) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. TXG920425, Part III, Section B.4].</p> <p>2) Failure to store manure, litter, or sludge within the drainage area of an RCS in a manner that otherwise prevents contaminated stormwater runoff from the storage area. Specifically, the investigator documented that manure, litter, or sludge was being stored outside the RCS drainage area without a roof or impermeable covering, protection from external rainfall, or a berm [30 TEX. ADMIN. CODE § 321.39(e) and TPDES Permit No. TXG920425, Part III, Section A.8.(b)].</p> <p>3) Failure to prevent the growth of trees on the embankments of RCS No. 1. Specifically, the investigator documented trees growing along the pond embankments of RCS No. 1 [30 TEX. ADMIN. CODE § 321.39(b)(5) and TPDES Permit No. TXG920425, Part III, Section</p>	<p><b>Total Assessed:</b> \$4,430</p> <p><b>Total Deferred:</b> \$886  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,544</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent, on May 13, 2008, submitted a copy of the 2007 annual report to the TCEQ Amarillo Regional Office.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Locate compost areas within the drainage of a RCS or cover, berm, or otherwise protect the compost area to protect from runoff in the case of the design (25-year, 24-hour) rainfall event;</p> <p>ii. Either berm, cover with an impermeable material, or roof the stored manure, litter, and sludge storage area, or relocate the storage of manure, litter, or sludge within the drainage area of a RCS; and</p> <p>iii. Remove the trees from the pond embankment of RCS No.1.</p> <p>b. Within 90 days after the effective date of this Agreed Order, develop and implement a NMP for the Facility and submit a copy of the NMP.</p> <p>c. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a through b.</p>

<p>A.9.(b)(2)]. 4) Failure to develop and implement a Nutrient Management Plan ("NMP") before July 31, 2007 [30 TEX. ADMIN. CODE § 321.40(k)(3) and TPDES Permit No. TXG920425, Part III, Section A.11.(a)].</p> <p>5) Failure to submit an annual report containing information described in Part IV, Section B of TPDES Permit No. TXG920425 to the TCEQ by February 15 of each year [30 TEX. ADMIN. CODE § 321.46(e)(1) and TPDES Permit No. TXG920425, Part IV, Section B.1].</p>		
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Additional ID No(s): TXG920425





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	Assigned	2-Jun-2008			
	PCW	26-Jun-2008	Screening	26-Jun-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Jon Klemme dba Klemme Dairy		
Reg. Ent. Ref. No.	RN104479043		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36125	No. of Violations	5
Docket No.	2008-1020-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<i>Subtotal 1</i>	\$4,500
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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.

<b>Compliance History</b>	4.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$180
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Notes: An enhancement is recommended for two NOVs without same or similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<i>Subtotal 5</i>	\$250
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<b>Economic Benefit</b>	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
Total EB Amounts	\$215	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$2,500		

<b>SUM OF SUBTOTALS 1-7</b>	<i>Final Subtotal</i>	\$4,430
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<i>Final Penalty Amount</i>	\$4,430
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<i>Final Assessed Penalty</i>	\$4,430
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<b>DEFERRAL</b>	20.0% Reduction	<i>Adjustment</i>	-\$886
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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.

<b>PAYABLE PENALTY</b>	\$3,544
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Screening Date 26-Jun-2008

Docket No. 2008-1020-AGR-E

PCW

Respondent Jon Klemme dba Klemme Dairy

Policy Revision 2 (September 2002)

Case ID No. 36125

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN104479043

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

## Compliance History Worksheet

## &gt;&gt; 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	2	4%
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) 4%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

An enhancement is recommended for two NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 4%

**Screening Date** 26-Jun-2008 **Docket No.** 2008-1020-AGR-E **PCW**

**Respondent** Jon Klemme dba Klemme Dairy *Policy Revision 2 (September 2002)*

**Case ID No.** 36125 *PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN104479043

**Media [Statute]** Water Quality

**Enf. Coordinator** Merrilee Hupp

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 321.39(f) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. TXG920425, Part III, Section B.4

**Violation Description** Failed to roof, cover with an impermeable material, or berm the manure and dead animal composting area. Specifically, the investigator documented a composting pile that was not covered, roofed, or protected from external rainfall and was located outside of the drainage area of retention control structure ("RCS") No. 2.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			X	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Storing manure or dead animals outside of the drainage area of an RCS could expose human health or the environment to insignificant amounts of pollutants as a result of the violation.

**Adjustment** \$9,500

\$500

**Violation Events**

Number of Violation Events 1 44 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$500

One single event is recommended based upon documentation of the violation during the investigation beginning May 13, 2008.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	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 for this violation.

**Violation Subtotal** \$500

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

Estimated EB Amount \$9 Violation Final Penalty Total \$520

**This violation Final Assessed Penalty (adjusted for limits)** \$520

## Economic Benefit Worksheet

**Respondent:** Jon Klemme dba Klemme Dairy  
**Case ID No.:** 36125  
**Reg. Ent. Reference No.:** RN104479043  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$200	13-May-2008	31-Dec-2008	0.64	\$0	\$8	\$9
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated costs to move the manure, litter, or sludge to the drainage area of RCS No. 2 or costs to berm or cover the stored manure, litter, or sludge. The date required is the initial date of the investigation. The final date is the date of expected compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$200

**TOTAL**

\$9

**Screening Date** 26-Jun-2008 **Docket No.** 2008-1020-AGR-E **PCW**  
**Respondent** Jon Klemme dba Klemme Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 36125 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN104479043  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Merrilee Hupp

**Violation Number** 2  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.39(e) and TPDES Permit No. TXG920425, Part III, Section A.8.(b)  
**Violation Description** Failed to store manure, litter, or sludge within the drainage area of an RCS. Specifically, the investigator documented that manure, litter, or sludge was being stored outside the RCS drainage area without a roof or impermeable covering, protection from external rainfall, or a berm.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	1500	Harm			Percent	
		Release	Major	Moderate		Minor
		Actual				
	Potential			X	5%	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Storing manure, litter, or sludge outside of the drainage area of an RCS could expose human health or the environment to insignificant amounts of pollutants which as a result of the violation.

**Adjustment** \$9,500

\$500

**Violation Events**

Number of Violation Events 1 Number of violation days 44

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$500

One single event is recommended based upon documentation of the violation during the investigation beginning May 13, 2008.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$500

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

**Estimated EB Amount** \$0 **Violation Final Penalty Total** \$520  
**This violation Final Assessed Penalty (adjusted for limits)** \$520

## Economic Benefit Worksheet

**Respondent** Jon Klemme dba Klemme Dairy  
**Case ID No.** 36125  
**Reg. Ent. Reference No.** RN104479043  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See violation No. 1

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

<b>Screening Date</b> 26-Jun-2008	<b>Docket No.</b> 2008-1020-AGR-E	<b>PCW</b>		
<b>Respondent</b> Jon Klemme dba Klemme Dairy	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 36125	<i>PCW Revision June 12, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN104479043				
<b>Media [Statute]</b> Water Quality				
<b>Enf. Coordinator</b> Merrilee Hupp				
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 321.39(b)(5) and TPDES Permit No. TXG920425, Part III, Section A.9.(b)(2)			
<b>Violation Description</b>	Failed to prevent the growth of trees on the embankments of RCS No. 1. Specifically, the investigator documented trees growing along the pond embankments of RCS No. 1.			
<b>Base Penalty</b>		\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
				<b>Percent</b> <input type="text" value="5%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment may be exposed to insignificant amounts of pollutants as a result of this violation.			
<b>Adjustment</b>			\$9,500	
<b>\$500</b>				
<b>Violation Events</b>				
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="44"/>		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input checked="" type="checkbox"/>		
<b>Violation Base Penalty</b> <input type="text" value="\$500"/>				
One single event is recommended based upon documentation of the violation during the investigation beginning May 13, 2008.				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/>	<b>\$0</b>	
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>			
Ordinary	<input type="checkbox"/>			
N/A	<input checked="" type="checkbox"/>	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>			<b>\$500</b>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
Estimated EB Amount <input type="text" value="\$4"/>		Violation Final Penalty Total <input type="text" value="\$520"/>		
<b>This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$520"/></b>				

## Economic Benefit Worksheet

**Respondent** Jon Klemme dba Klemme Dairy  
**Case ID No.** 36125  
**Reg. Ent. Reference No.** RN104479043  
**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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	13-May-2008	31-Dec-2008	0.64	\$0	\$4	\$4
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to remove trees along RCS No. 1. The date required is the initial date of investigation. The final date is the expected date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4

<b>Screening Date</b> 26-Jun-2008	<b>Docket No.</b> 2008-1020-AGR-E	<b>PCW</b>
<b>Respondent</b> Jon Klemme dba Klemme Dairy		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 36125		<small>PCW Revision June 12, 2008</small>
<b>Reg. Ent. Reference No.</b> RN104479043		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Merrilee Hupp		
<b>Violation Number</b>	<input type="text" value="4"/>	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 321.40(k)(3) and TPDES Permit No. TXG920425, Part III, Section A.11.(a)	
<b>Violation Description</b>	Failed to develop and implement a Nutrient Management Plan ("NMP"), as documented in an investigation beginning May 13, 2008.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>				
		Major	Moderate	Minor	
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="10%"/>
	<input type="text"/>	X	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

	daily	<input type="text"/>
	monthly	X
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

mark only one with an x

**Violation Base Penalty**

**Good Faith Efforts to Comply**       Reduction     

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

**Notes**

**Violation Subtotal**

**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** Jon Klemme dba Klemme Dairy  
**Case ID No.** 36125  
**Reg. Ent. Reference No.** RN104479043  
**Media** Water Quality  
**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,000	1-Aug-2007	31-Dec-2008	1.42	\$9	\$189	\$199
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to develop and implement a Nutrient Management Plan ("NMP"). The date required is the due date of the NMP. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$199

**Screening Date** 26-Jun-2008 **Docket No.** 2008-1020-AGR-E **PCW**  
**Respondent** Jon Klemme dba Klemme Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 36125 *PCW Revision June 12, 2008*  
**Reg. Ent. Reference No.** RN104479043  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Merrilee Hupp

**Violation Number** 5  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.46(e)(1) and TPDES Permit No. TXG920425, Part IV, Section B.1

**Violation Description** Failed to submit an annual report containing information described in Part IV, Section B of TPDES Permit No. TXG920425 to the TCEQ by February 15 of each year, as documented in an investigation beginning May 13, 2008.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events: 1      88 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.

**Good Faith Efforts to Comply** 25.0% Reduction \$250

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

**Notes:** The Respondent submitted the annual report on May 13, 2008.

**Violation Subtotal** \$750

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

Estimated EB Amount: \$3      Violation Final Penalty Total: \$790

**This violation Final Assessed Penalty (adjusted for limits)** \$790

## Economic Benefit Worksheet

**Respondent:** Jon Klemme dba Klemme Dairy  
**Case ID No.:** 36125  
**Reg. Ent. Reference No.:** RN104479043  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$200	15-Feb-2008	13-May-2008	0.24	\$0	\$3	\$3
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs for an annual report of the Facility. The date required is the due date of the 2007 annual report. The final date is the date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$3



Citation: 30 TAC Chapter 321, SubChapter B 321.38(d)  
Rqmt Prov: PERMIT TXG920425 Part III.A.4(e)  
Description: The facility has failed to conduct a site-evaluation to determine that all control facilities are located outside of the 100-year floodplain or protected from inundation and damage that may occur during a flood.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.36(g)(1)

Rqmt Prov: PERMIT TXG920425 Part III.A.12(a) and (b)

Description: The facility has failed to collect and have analyzed, initial and annual soil samples.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(9)

Rqmt Prov: PERMIT TXG920425 Part III.A.11(e)(4)

Description: The facility has failed to collect and have analyzed a representative sample of wastewater and manure.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.38(g)(3)(C)

Rqmt Prov: PERMIT TXG920425 Part III.A.6(g)(3)(ii)

Description: The facility has failed to conduct compaction tests for the installed liners for RCSs #1 & #2, and have a licensed Texas professional engineer certify that the liner permeability is equal to or less than  $1 \times 10^{-7}$  cm/sec over a thickness of 18 inches.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.38(g)(3)(E)

Rqmt Prov: PERMIT TXG920425 Part III.A.6.(a)(2)

Description: The facility has failed to have the capacities of RCSs #1 & #2 certified by a licensed Texas professional engineer.

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  
JON KLEMME DBA KLEMME  
DAIRY  
RN104479043

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-1020-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 Jon Klemme dba Klemme 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 confined animal feeding operation located on the west side of County Road 22, approximately two miles north of the intersection of State Highway 281 and County Road 22 in Hutchinson 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 June 3, 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 Four Thousand Four Hundred Thirty Dollars (\$4,430) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Five Hundred Forty-Four Dollars (\$3,544) of the administrative penalty and Eight Hundred Eighty-Six Dollars (\$886) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent, on May 13, 2008, submitted a copy of the 2007 annual report to the TCEQ Amarillo Regional Office.
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 roof, cover with an impermeable material, or berm the manure and dead animal composting area, in violation of 30 TEX. ADMIN. CODE § 321.39(f) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. TXG920425, Part III, Section B.4, as documented during an investigation beginning on May 13, 2008. Specifically, the investigator documented a composting pile that was not covered, roofed, or protected from external rainfall and was located outside of the drainage area of retention control structure ("RCS") No. 2.
2. Failed to store manure, litter, or sludge within the drainage area of an RCS in a manner that otherwise prevents contaminated stormwater runoff from the storage area, in violation of 30 TEX. ADMIN. CODE § 321.39(e) and TPDES Permit No. TXG920425, Part III, Section A.8.(b), as documented during an investigation beginning on May 13, 2008. Specifically, the investigator documented that manure, litter, or sludge was being stored outside the RCS drainage area without a roof or impermeable covering, protection from external rainfall, or a berm.



3. Failed to prevent the growth of trees on the embankments of RCS No. 1, in violation of 30 TEX. ADMIN. CODE § 321.39(b)(5) and TPDES Permit No. TXG920425, Part III, Section A.9.(b)(2), as documented during an investigation beginning on May 13, 2008. Specifically, the investigator documented trees growing along the pond embankments of RCS No. 1.
4. Failed to develop and implement a Nutrient Management Plan ("NMP") before July 31, 2007, in violation of 30 TEX. ADMIN. CODE § 321.40(k)(3) and TPDES Permit No. TXG920425, Part III, Section A.11.(a), as documented during an investigation beginning on May 13, 2008.
5. Failed to submit an annual report containing information described in Part IV, Section B of TPDES Permit No. TXG920425 to the TCEQ by February 15 of each year, in violation of 30 TEX. ADMIN. CODE § 321.46(e)(1) and TPDES Permit No. TXG920425, Part IV, Section B.1, as documented during an investigation beginning on May 13, 2008.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jon Klemme dba Klemme Dairy, Docket No. 2008-1020-AGR-E" to:  

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days of the effective date of this Agreed Order complete the following corrective actions:
    - i. Locate compost areas within the drainage of a RCS or cover, berm, or otherwise protect the compost area to protect from runoff in the case of the design (25-year, 24-hour) rainfall event, in accordance with 30 TEX. ADMIN. CODE § 321.39(f) and General Permit No. TXG920170, Part III, B.4;
    - ii. Either berm, cover with an impermeable material, or roof the stored manure, litter, and sludge storage area, or relocate the storage of manure, litter, or sludge within



the drainage area of a RCS in accordance with 30 TEX. ADMIN. CODE § 321.39(e) and TPDES Permit No. TXG920425, Part III, Section A.8.(b); and

- iii. Remove the trees from the pond embankment of RCS No.1 pursuant to 30 TEX. ADMIN. CODE § 321.39(b)(5) and TPDES Permit No. TXG920425, Part III, Section A.9.(b)(2).
- b. Within 90 days of the effective date of this Agreed Order develop and implement a NMP for the Facility and submit a copy of the NMP, in accordance with Ordering Provision No. 2.c.
- c. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Amarillo Regional Office  
Texas Commission on Environmental Quality  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

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.

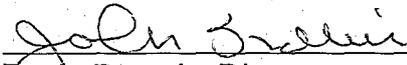
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the 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

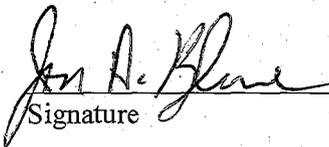
12/8/08  
Date

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

9-20-08  
Date

Jon Klemme  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Jon Klemme dba Klemme 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.

