EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1171-AGR-E **TCEQ ID:** RN101524999 **CASE NO.:** 36203

RESPONDENT NAME: Caprock Dairy, L.L.C.

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	__MULTI-MEDIA (check all that apply)	__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: Caprock Dairy, 3.5 miles north of United States Highway 70, on the west side of County Road 50, Lamb County

TYPE OF OPERATION: Dairy farm

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on April 30, 2008, alleging that the Respondent was disposing excess slurry on the property. 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 December 22, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. David Lawrence, Partner/Manager, Caprock Dairy, L.L.C., 160 County Road 50, Muleshoe, Texas 79347

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:** April 30, 2008 **Date of Investigation Relating to this Case:** May 6, 2008 **Date of NOV/NOE Relating to this Case:** June 19, 2008 (NOE) **Background Facts:** This was a complaint investigation. **WATER** 1) Failure to obtain authorization to operate a concentrated animal feeding operation ("CAFO") under a water quality general permit or individual permit [30 TEX. ADMIN. CODE § 321.33(a)]. 2) Failure to prevent the unauthorized discharge of agricultural waste from a CAFO. Specifically, the investigator observed no berms or controls in place to prevent any discharge of sludge, which had been stockpiled in the southwest corner of a previously unidentified land management unit. As a result, the sludge ran under a fence line and into the county borrow ditch; any runoff would flow south through the county borrow ditches into Blackwater Draw [TEX. WATER CODE § 26.121(a)(1)].	**Total Assessed:** $4,080 **Total Deferred:** $816 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $3,264 **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	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges. b. Within 15 days after the effective date of this Agreed Order, remove and properly dispose of any discharged sludge from the county borrow ditch. c. Within 30 days after the effective date of this Agreed Order: i. Develop and implement a pollution prevention plan to comply with the requirements of Texas Pollutant Discharge Elimination System General Permit No. TXG920000; and ii. Submit a completed Notice of Intent and application fee. d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing. e. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provisions a, b, and c. f. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a CAFO has been obtained or that operation has ceased until appropriate authorization is obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records.

Additional ID No(s).: TXG920718

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	23-Jun-2008				
PCW	11-Jul-2008	Screening	11-Jul-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Caprock Dairy, L.L.C.		
Reg. Ent. Ref. No.	RN101524999		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36203	No. of Violations	2
Docket No.	2008-1171-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 2.0% Enhancement — *Subtotals 2, 3, & 7* $80

Notes: An enhancement is recommended as a result of having one NOV without same or similar violations.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $0

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $817
Approx. Cost of Compliance $13,000
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $4,080

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $4,080

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $4,080

DEFERRAL 20.0% Reduction — *Adjustment* -$816

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 $3,264

Screening Date 11-Jul-2008 **Docket No.** 2008-1171-AGR-E **PCW**

Respondent Caprock Dairy, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 36203 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101524999

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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

An enhancement is recommended as a result of having one NOV without same or similar violations.

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

Screening Date 11-Jul-2008 **Docket No.** 2008-1171-AGR-E **PCW**

Respondent Caprock Dairy, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 36203

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101524999

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.33(a)

Violation Description Failed to obtain authorization to operate a concentrated animal feeding operation ("CAFO") under a water quality general permit or individual permit, as documented during an investigation conducted on May 6, 2008.

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 rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 3

66 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended from the date of investigation (May 6, 2008) to the date of screening (July 11, 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 $3,000

Economic Benefit (EB) for this violation

Estimated EB Amount $575

Statutory Limit Test

Violation Final Penalty Total $3,060

This violation Final Assessed Penalty (adjusted for limits) $3,060

Economic Benefit Worksheet

Respondent Caprock Dairy, L.L.C.
Case ID No. 36203
Reg. Ent. Reference No. RN101524999
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$10,000	6-May-2008	30-Jun-2009	1.15	$575	n/a	$575
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to prepare and submit an administratively complete permit application. Associated expenses include application fee, site survey, and engineering certifications. Date required is the date of the investigation. 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: $10,000

TOTAL: $575

Screening Date 11-Jul-2008 **Docket No.** 2008-1171-AGR-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

Respondent Caprock Dairy, L.L.C.

Case ID No. 36203

Reg. Ent. Reference No. RN101524999

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 2

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

Violation Description Failed to prevent the unauthorized discharge of agricultural waste from a CAFO. Specifically, the investigator observed no berms or controls in place to prevent any discharge of sludge, which had been stockpiled in the southwest corner of a previously unidentified land management unit. As a result, the sludge ran under a fence line and into the county borrow ditch; any runoff would flow south through the county borrow ditches into Blackwater Draw.

Base Penalty $10,000

>> 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 unauthorized discharge.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 66 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 date of investigation (May 6, 2008) to the date of screening (July 11, 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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $242

Statutory Limit Test

Violation Final Penalty Total $1,020

This violation Final Assessed Penalty (adjusted for limits) $1,020

Economic Benefit Worksheet

Respondent Caprock Dairy, L.L.C.
Case ID No. 36203
Reg. Ent. Reference No. RN101524999
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)	$3,000	6-May-2008	30-Jun-2009	1.15	$12	$230	$242
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 cost to clean up sludge from borrow ditch and to implement best management practices to prevent unauthorized discharges of agricultural waste. Date required is the investigation date. 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: $3,000

TOTAL: $242

Compliance History

Customer/Respondent/Owner-Operator:	CN603177007	Caprock Dairy, L.L.C.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101524999	CAPROCK DAIRY	Classification: HIGH	Site Rating: 0.0

ID Number(s):	WASTEWATER AGRICULTURE	PERMIT	TXG920718
	ON SITE SEWAGE FACILITY	PERMIT	1400149
Location:	3.5 miles north of United States Highway 70, west side of County Road 50, Lamb County, Texas		Rating Date: September 1, 2007
TCEQ Region:	REGION 02 - LUBBOCK		Repeat Violator: No
Date Compliance History Prepared:	July 11, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 11, 2003 to July 11, 2008		

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

Name: Steve Villatoro Phone: 512-239-4930

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? Yes
3. If Yes, who is the current owner? Caprock Dairy, L.L.C.
4. If Yes, who was/were the prior owner(s)? Caprock Dairy Ltd.
5. When did the change(s) in ownership occur? 3/29/2007

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 11/03/2003 (253342)
2 03/28/2005 (375603)
3 07/31/2006 (486588)
4 03/19/2008 (618978)

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

Date: 03/21/2008 (618978)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(6)

Rqmt Prov: PERMIT Part III.A.4.(a)

Description: Failure to utilize Best Management Practices to control identified Potential Pollutant Sources.

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 CAPROCK DAIRY, L.L.C. RN101524999	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1171-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 Caprock Dairy, L.L.C. ("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 before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy farm approximately 3.5 miles north of United States Highway 70, on the west side of County Road 50, in Lamb County, Texas (the "Site").

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 24, 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 Eighty Dollars ($4,080) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The

Respondent has paid Three Thousand Two Hundred Sixty-Four Dollars ($3,264) of the administrative penalty and Eight Hundred Sixteen Dollars ($816) 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 may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain authorization to operate a concentrated animal feeding operation ("CAFO") under a water quality general permit or individual permit, as documented during an investigation conducted on May 6, 2008, in violation of 30 TEX. ADMIN. CODE § 321.33(a).

2. Failed to prevent the unauthorized discharge of agricultural waste from a CAFO, in violation of TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on May 6, 2008. Specifically, the investigator observed no berms or controls in place to prevent any discharge of sludge, which had been stockpiled in the southwest corner of a previously unidentified land management unit. As a result, the sludge ran under a fence line and into the county borrow ditch; any runoff would flow south through the county borrow ditches into Blackwater Draw.

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: Caprock Dairy, L.L.C., Docket No. 2008-1171-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. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges;

   b. Within 15 days after the effective date of this Agreed Order, remove and properly dispose of any discharged sludge from the county borrow ditch;

   c. Within 30 days after the effective date of this Agreed Order,

      i. Develop and implement a pollution prevention plan to comply with the requirements of TPDES General Permit No. TXG920000; and

      ii. Submit a completed Notice of Intent ("NOI") and application fee to:

      Texas Commission on Environmental Quality
      Water Application Team MC-161
      P.O. Box 13087
      Austin, Texas 78711-3087

   d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;

   e. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision No. 2.a, 2.b and 2.c, as described in Ordering Provision No. 2.f, below; and

   f. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a CAFO has been obtained or that operation has ceased until appropriate authorization is obtained. The certification shall include detailed

supporting documentation including photographs, receipts, and/or other records. 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

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 Site 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

John Sadlier
For the Executive Director

12/08/2008
Date

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

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

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

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

David Lawrence
Signature

9-23-08
Date

David Lawrence
Name (Printed or typed)
Authorized Representative of
Caprock Dairy, L.L.C.

Partner / Manager
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.