

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0664-AGR-E TCEQ ID: RN102328523 CASE NO.: 37575

RESPONDENT NAME: Dirk Vereecken dba Vereecken Dairy

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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>SITE WHERE VIOLATION(S) OCCURRED: Vereecken Dairy, located on the south side of County Road 1196 approximately 0.25 mile west of the intersection of State Highway 154 and County Road 1196, Hopkins County</p> <p>TYPE OF OPERATION: Concentrated animal feeding operation ("CAFO")</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received September 24, 2008, alleging that wastewater irrigation had discharged from a land management unit ("LMU") and flowed into a neighbor's stock pond. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 5, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Dirk Vereecken, Owner, Vereecken Dairy, 401 County Road 1196 West, Yantis, Texas 75497 Ms. Jan Berkvens, Manager, Vereecken Dairy, 401 County Road 1196 West, Yantis, Texas 75497 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: September 24, 2008</p> <p>Date of Investigation Relating to this Case: September 25, 2008</p> <p>Date of NOV/NOE Relating to this Case: April 24, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failure to prevent the discharge of wastewater associated from the operation of a CAFO into or adjacent to water in the state. Specifically, wastewater was observed standing in several locations in a path from a designated LMU and leading onto the neighbor's property [General Permit No. TXG920669, Part III.A.11.(b)(1) and (d)(1) and 30 TEX. ADMIN. CODE § 321.40(d) and (e)].</p> <p>2) Failure to maintain a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses. Specifically, wastewater was observed being applied to plowed fields within 100 feet of surface water [General Permit No. TXG920669, Part III.A.11.(f)(1) and 30 TEX. ADMIN. CODE § 321.40(h)].</p>	<p>Total Assessed: \$6,600</p> <p>Total Deferred: \$1,320 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$5,280</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of wastewater discharges from LMUs; and</p> <p>ii. Develop and implement procedures to ensure that a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses is maintained.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): Permit No. TXG920669



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	27-Apr-2009			
	PCW	12-May-2009	Screening	6-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Dirk Vereecken dba Vereecken Dairy
Reg. Ent. Ref. No.	RN102328523
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37575	No. of Violations	2
Docket No.	2009-0664-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		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)	<i>Subtotal 1</i>	\$6,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	10.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$600
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Notes: The Respondent was issued two NOVs with the same/similar type of violations.

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

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$127
 Approx. Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$6,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	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>	\$6,600
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$6,600
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,320
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$5,280
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Screening Date 6-May-2009	Docket No. 2009-0664-AGR-E	PCW
Respondent Dirk Vereecken dba Vereecken Dairy	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 37575	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN102328523		
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 <i>(number of NOVs meeting criteria)</i>	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 10%

>> 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 Respondent was issued two NOVs with the same/similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 6-May-2009 **Docket No.** 2009-0664-AGR-E **PCW**
Respondent Dirk Vereecken dba Vereecken Dairy *Policy Revision 2 (September 2002)*
Case ID No. 37575 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102328523
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number
Rule Cite(s) General Permit No. TXG920669, Part III.A.11.(b)(1) and (d)(1) and 30 Tex. Admin. Code § 321.40(d) and (e)

Violation Description
 Failed to prevent the discharge of wastewater associated from the operation of a concentrated animal feeding operation ("CAFO") into or adjacent to water in the state. Specifically, wastewater was observed standing in several locations in a path from a designated land management unit ("LMU") and leading onto the neighbor's property.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes
 Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Three quarterly events are recommended. The penalty was calculated from the investigation date, September 25, 2008, to the screening date, May 6, 2009.

Good Faith Efforts to Comply Reduction

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

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

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 Dirk Vereecken dba Vereecken Dairy
Case ID No. 37575
Reg. Ent. Reference No. RN102328523
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	Overtime Costs	EB Amount
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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)	\$1,000	25-Sep-2008	1-Jan-2010	1.27	\$63	n/a	\$63

Notes for DELAYED costs

Estimated cost to develop and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of wastewater discharges from LMUs. Date required is the investigation date and the final date is the expected compliance date.

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

\$1,000

TOTAL

\$63

Screening Date	6-May-2009	Docket No.	2009-0664-AGR-E	PCW
Respondent	Dirk Vereecken dba Vereecken Dairy			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	37575			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102328523			
Media [Statute]	Water Quality			
Enf. Coordinator	Jorge Ibarra, P.E.			
Violation Number	2			

Rule Cite(s)
General Permit No. TXG920669, Part III.A.11.(f)(1) and 30 Tex. Admin. Code § 321.40(h)

Violation Description
Failed to maintain a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses. Specifically, wastewater was observed being applied to plowed fields within 100 feet of surface water.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential		x		10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes
Failure to maintain no less than 100 feet buffer zone between waste or wastewater application areas and surface areas and watercourses could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty \$3,000

Three quarterly events are recommended. The penalty was calculated from the investigation date, September 25, 2008, to the screening date, May 6, 2009.

Good Faith Efforts to Comply

Reduction Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
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

Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Dirk Vereecken dba Vereecken Dairy
Case ID No.: 37575
Reg. Ent. Reference No.: RN102328523
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)	\$1,000	25-Sep-2008	1-Jan-2010	1.27	\$63	n/a	\$63

Notes for DELAYED costs

Estimated cost to implement procedures to maintain no less than 100 feet buffer zone between waste or wastewater application areas and surface areas and watercourses. Date required is the investigation date and the final date is the expected compliance date.

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

\$1,000

TOTAL

\$63

Compliance History Report

Customer/Respondent/Owner-Operator: CN602932212 VEREecken, DIRK Classification: AVERAGE Rating: 0.67
Regulated Entity: RN102328523 VEREecken DAIRY Classification: AVERAGE Site Rating: 0.67
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920669
PETROLEUM STORAGE TANK REGISTRATION 58885
REGISTRATION
Location: ON THE S SIDE OF CR 1196 APPROX 0.25 MILES W OF
THE INTERSECTION OF SH 154 AND CR 1196 IN
HOPKINS COUNTY
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: May 06, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 06, 2004 to May 06, 2009
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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? CHAMNESS, BILLY MACK
5. When did the change(s) in owner or operator occur? 10/11/2004
6. Rating Date: 9/1/2008 Repeat Violator: NO

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 | 05/03/2005 | (377558) |
| 2 | 02/13/2006 | (453535) |
| 3 | 03/13/2006 | (457815) |
| 4 | 04/20/2006 | (461973) |
| 5 | 08/24/2006 | (510070) |
| 6 | 01/10/2007 | (535821) |
| 7 | 01/29/2007 | (537768) |
| 8 | 11/15/2007 | (608695) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 04/21/2006 (461973) CN602932212
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)
Description: Failure to prevent the discharge of wastewater associated from the operation of a CAFO into or

adjacent to waters in the state.

Date: 08/21/2008 (685965)

CN602932212

Self Report? NO

Classificatio Major

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)
TXG920000 Part II.A PERMIT

Description: Failure to operate a concentrated animal feeding operation authorized under a general permit that caused or allowed a discharge or disposal of manure, litter, or wastewater into or adjacent to waters in the state.

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
DIRK VEREECKEN DBA
VEREECKEN DAIRY
RN102328523

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0664-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 Dirk Vereecken dba Vereecken 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 concentrated animal feeding operation ("CAFO") located on the south side of County Road 1196 approximately 0.25 mile west of the intersection of State Highway 154 and County Road 1196 in Hopkins County, Texas (the "Site").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 29, 2009.
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 Six Thousand Six Hundred Dollars (\$6,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Two Hundred Eighty Dollars (\$5,280) of the

administrative penalty and One Thousand Three Hundred Twenty Dollars (\$1,320) 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 prevent the discharge of wastewater associated from the operation of a concentrated animal feeding operation ("CAFO") into or adjacent to water in the state, in violation of General Permit No. TXG920669, Part III.A.11.(b)(1) and (d)(1) and 30 TEX. ADMIN. CODE § 321.40(d) and (e), as documented during an investigation conducted on September 25, 2008. Specifically, wastewater was observed standing in several locations in a path from a designated land management unit ("LMU") and leading onto the neighbor's property.
2. Failed to maintain a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses, in violation of General Permit No. TXG920669, Part III.A.11.(f)(1) and 30 TEX. ADMIN. CODE § 321.40(h), as documented during an investigation conducted on September 25, 2008. Specifically, wastewater was observed being applied to plowed fields within 100 feet of surface water.

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: Dirk Vereecken dba Vereecken Dairy, Docket No. 2009-0664-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 after the effective date of this Agreed Order:
 - i. Develop and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of wastewater discharges from LMUs; and
 - ii. Develop and implement procedures to ensure that a vegetative buffer of 100 feet between manure, litter, and wastewater application areas and all surface water and watercourses is maintained.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

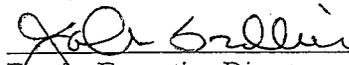
Water Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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

9/9/09
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

7-14-09
Date

JAN BERIKVENS
Name (Printed or typed)
Authorized Representative of
Dirk Vereecken dba Vereecken Dairy

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.

