

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1020-AGR-E **TCEQ ID:** RN102792306 **CASE NO.:** 37890

**RESPONDENT NAME:** Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller 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> Koller Dairy, 4752 Farm-to-Market Road 557, Camp County</p> <p><b>TYPE OF OPERATION:</b> Dairy operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on February 12, 2009, alleging that an unauthorized discharge was occurring at the facility. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 23, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Johnny Koller, Owner, Ms. Amanda Koller, Leaser, and Ms. Christina Koller, Owner, Koller Dairy, 4752 Farm-to-Market Road 557, Pittsburg, Texas 75686  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2009-1020-AGR-E

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input 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> February 12, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> February 13, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 15, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>Failure to prevent an unauthorized discharge of wastewater from an animal feeding operation into or adjacent to water in the state. Specifically, process wastewater was allowed to flow over low areas in the levee of the retention control structure ("RCS") to an unnamed creek that flows to a pond on adjacent property. Samples collected from the creek at the property boundary contained elevated concentrations of total phosphorus (46.5 milligrams/liter ("mg/L")), ammonia nitrogen ("NH3-N")(980.5 mg/L), biochemical oxygen demand ("BOD") (119 mg/L), and total suspended solids ("TSS") (380 mg/L) compared to samples collected upgradient from the RCS with concentrations of total phosphorus (2.38 mg/L), NH3-N (0.108 mg/L), BOD (4 mg/L), and TSS (18.3 mg/L) [TEX. WATER CODE § 26.121(a)(1)].</p>	<p><b>Total Assessed:</b> \$770</p> <p><b>Total Deferred:</b> \$154  <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> \$616</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN603464462, CN603464454, CN601418593</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 on February 14, 2009, the Respondents raised low areas in the RCS levee with fill and capped the fill with clay to prevent future wastewater discharges.</p>

Additional ID No(s): 0



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	<b>Assigned</b>	22-Jun-2009	<b>Screening</b>	2-Jul-2009	<b>EPA Due</b>	
	<b>PCW</b>	6-Jul-2009				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy		
<b>Reg. Ent. Ref. No.</b>	RN102792306		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	37890	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1020-AGR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Thomas Jecha
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 2-Jul-2009

**Docket No.** 2009-1020-AGR-E

**PCW**

**Respondent** Amanda Koller, Christina Koller, and Johnny Minze Koller

Policy Revision 2 (September 2002)

**Case ID No.** 37890

PCW Revision October 30, 2009

**Reg. Ent. Reference No.** RN102792306

**Media [Statute]** Water Quality

**Enf. Coordinator** Thomas Jecha

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (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%
<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)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with dissimilar violations issued to this Facility within the past five years.

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

<b>Screening Date</b> 2-Jul-2009	<b>Docket No.</b> 2009-1020-AGR-E	<b>PCW</b>
<b>Respondent</b> Amanda Koller, Christina Koller, and Johnny Minze Koller dba Kolle	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37890	<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN102792306		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Thomas Jecha		
<b>Violation Number</b> 1		
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a)(1)	
<b>Violation Description</b>	Failed to prevent an unauthorized discharge of wastewater from an animal feeding operation into or adjacent to water in the state. Specifically, process wastewater was allowed to flow over low areas in the levee of the retention control structure ("RCS") to an unnamed creek that flows to a pond on adjacent property. Samples collected from the creek at the property boundary contained elevated concentrations of total phosphorus (46.5 milligrams/liter ("mg/L")), ammonia nitrogen ("NH3-N") (980.5 mg/L), biochemical oxygen demand ("BOD") (119 mg/L), and total suspended solids ("TSS") (380 mg/L) compared to samples collected upgradient from the RCS with concentrations of total phosphorus (2.38 mg/L), NH3-N (0.108 mg/L), BOD (4 mg/L), and TSS (18.3 mg/L).	
	<b>Base Penalty</b>	\$10,000
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
	<b>Harm</b>	
	Release	Major    Moderate    Minor
OR	Actual	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
	Potential	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
	<b>Percent</b>	10%
<b>&gt;&gt; Programmatic Matrix</b>		
	<b>Falsification</b>	
	Major    Moderate    Minor	
	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
	<b>Percent</b>	0%
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.	
	<b>Adjustment</b>	\$9,000
		\$1,000
<b>Violation Events</b>		
	Number of Violation Events	1
		1
		Number of violation days
	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>
<small>mark only one with an x</small>		
	<b>Violation Base Penalty</b>	\$1,000
One quarterly event is recommended from the February 13, 2009 investigation until compliance was achieved on February 14, 2009.		
<b>Good Faith Efforts to Comply</b>		
	25.0% Reduction	\$250
	Before NOV    NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/> <input type="checkbox"/>	
Ordinary	<input checked="" type="checkbox"/> <input type="checkbox"/>	
N/A	<input type="checkbox"/> (mark with x)	
<b>Notes</b>	Compliance was achieved on February 14, 2009.	
	<b>Violation Subtotal</b>	\$750
<b>Economic Benefit (EB) for this violation</b>		
	<b>Estimated EB Amount</b>	\$0
<b>Statutory Limit Test</b>		
	<b>Violation Final Penalty Total</b>	\$770
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$770

## Economic Benefit Worksheet

**Respondent** Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy

**Case ID No.** 37890

**Reg. Ent. Reference No.** RN102792306

**Media** Water Quality

**Violation No.** 1

<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
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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)	\$200	13-Feb-2009	14-Feb-2009	0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to raise low areas in the RCS levee with fill and cap the fill with clay to prevent future wastewater discharges. The date required is the investigation date and 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**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603464462 KOLLER, AMANDA Classification: AVERAGE Rating: 1.11  
 Regulated Entity: RN102792306 KOLLER DAIRY Classification: AVERAGE Site Rating: 0.33  
 ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R05AG0230  
 Location: 4752 FM 557, CAMP CO. TX, 75686  
 TCEQ Region: REGION 05 - TYLER  
 Date Compliance History Prepared: June 25, 2009  
 Agency Decision Requiring Compliance Enforcement  
 Compliance Period: June 25, 2004 to June 25, 2009

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

Name: Thomas Jecha Phone: 239 - 2576

### 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? JOHNNY MINZE, AMANDA. AND CHRISTINA KOLLER
4. If Yes, who was/were the prior owner(s)/operator(s) ? THOMAS CRISP
5. When did the change(s) in owner or operator occur? 04/27/2005

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	05/26/2005	(381118)	
2	02/01/2008	(616562)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	05/27/2005 (381118)	CN603464454	
Self	NO	Classification:	Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.47		
Description:	Failure to collect and analyze representative soil samples from each LMU prior to commencing wastewater application.		
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603464454 KOLLER, CHRISTINA Classification: AVERAGE Rating: 1.11  
Regulated Entity: RN102792306 KOLLER DAIRY Classification: AVERAGE Site Rating: 0.33  
ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R05AG0230  
Location: 4752 FM 557, CAMP CO. TX, 75686  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: June 25, 2009  
Agency Decision Requiring Compliance Enforcement  
Compliance Period: June 25, 2004 to June 25, 2009

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

Name: Thomas Jecha Phone: 239 - 2576

## 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? JOHNNY MINZE, AMANDA, AND CHRISTINA KOLLER
4. If Yes, who was/were the prior owner(s)/operator(s) ? THOMAS CRISP
5. When did the change(s) in owner or operator occur? 04/27/2005
- 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 05/26/2005 (381118)
  - 2 02/01/2008 (616562)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/27/2005 (381118)	CN603464454
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.47	
Description:	Failure to collect and analyze representative soil samples from each LMU prior to commencing wastewater application.	
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601418593 KOLLER, JOHNNY MINZE Classification: AVERAGE Rating: 1.11  
Regulated Entity: RN102792306 KOLLER DAIRY Classification: AVERAGE Site Rating:0.33  
ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R05AG0230  
Location: 4752 FM 557, CAMP CO. TX, 75686  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: June 25, 2009  
Agency Decision Requiring Compliance Enforcement  
Compliance Period: June 25, 2004 to June 25, 2009

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

Name: Thomas Jecha Phone: 239 - 2576

## 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? JOHNNY MINZE, AMANDA, AND CHRISTINA KOLLER
4. If Yes, who was/were the prior owner(s)/operator(s)? THOMAS CRISP
5. When did the change(s) in owner or operator occur? 04/27/2005

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 | 05/26/2005 | (381118) |
| 2 | 02/01/2008 | (616562) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |       |         |          |             |
|-------|---------|----------|-------------|
| Date: | 5/27/05 | (381118) | CN603464454 |
|-------|---------|----------|-------------|
- Self Report? NO Classification: Minor
- Citation: 30 TAC Chapter 321, SubChapter B 321.47  
Description: Failure to collect and analyze representative soil samples from each LMU prior to commencing wastewater application.
- 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**

**AMANDA KOLLER, CHRISTINA  
KOLLER, AND JOHNNY MINZE  
KOLLER DBA KOLLER DAIRY  
RN102792306**

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**BEFORE THE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1020-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 Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a dairy operation located at 4752 Farm-to-Market Road 557 in Camp County, Texas (the "Facility").
2. The Respondents have discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about April 20, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seven Hundred Seventy Dollars (\$770) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Six Hundred Sixteen Dollars (\$616) of the administrative penalty and One Hundred Fifty-Four Dollars (\$154) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
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 Respondents 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 on February 14, 2009, the Respondents raised low areas in the retention control structure ("RCS") levee with fill and capped the fill with clay to prevent future wastewater discharges.
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 Respondents have 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 Respondents are alleged to have failed to prevent an unauthorized discharge of wastewater from an animal feeding operation into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on February 13, 2009. Specifically, process wastewater was allowed to flow over low areas in the levee of the RCS to an unnamed creek that flows to a pond on adjacent property. Samples collected from the creek at the property boundary contained elevated concentrations of total phosphorus (46.5 milligrams/liter ("mg/L")), ammonia nitrogen ("NH<sub>3</sub>-N") (980.5 mg/L), biochemical oxygen demand ("BOD") (119 mg/L), and total suspended solids ("TSS") (380 mg/L) compared to samples collected upgradient from the RCS with concentrations of total phosphorus (2.38 mg/L), NH<sub>3</sub>-N (0.108 mg/L), BOD (4 mg/L), and TSS (18.3 mg/L).

### III. DENIALS

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

### IV. ORDERING PROVISIONS

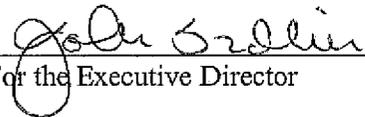
1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Amanda Koller, Christina Koller, and Johnny Minze Koller dba Koller Dairy, Docket No. 2009-1020-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. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
5. 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.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

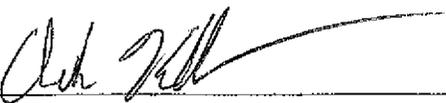
\_\_\_\_\_  
Date 10/20/2009

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

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

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

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 9-1-09

Amanda Koller  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Amanda Koller dba Koller Dairy

\_\_\_\_\_  
Lease  
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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Sullivan  
\_\_\_\_\_  
For the Executive Director

10/20/2009  
\_\_\_\_\_  
Date

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- 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]  
\_\_\_\_\_  
Signature

9-1-09  
\_\_\_\_\_  
Date

Christina Koller  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Christina Koller dba Koller Dairy

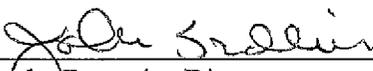
owner  
\_\_\_\_\_  
Title

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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

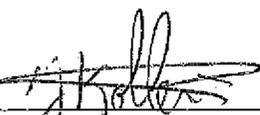
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- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 9-1-09

JOHNNY KOLLER  
Name (Printed or typed)  
Authorized Representative of  
Johnny Minze Koller dba Koller Dairy

owner  
Title

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