

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1041-AGR-E **TCEQ ID:** RN101523629 **CASE NO.:** 36107

RESPONDENT NAME: Kempenaar Real Estate, LTD. dba Still Meadow Dairy

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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

SITE WHERE VIOLATION(S) OCCURRED: Still Meadow Dairy, located along County Road 2346 at the intersection of County Road 2346 and County Road 2333, and approximately one-half mile west of the intersection of County Road 2333 and Farm-to-Market Road 269, Hopkins County

TYPE OF OPERATION: Dairy operation

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 5, 2009. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Jack H. Kempenaar, Owner, Still Meadow Dairy, 3362 County Road 2346, Como, Texas 75431
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 31, 2008</p> <p>Date of NOV/NOE Relating to this Case: May 26, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to prevent the unauthorized discharge of agricultural wastewater from a Concentrated Animal Feeding Operation ("CAFO") [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 321.31(a), and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920117, Part II.A].</p> <p>2) Failure to ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner [30 TEX. ADMIN. CODE § 321.39(b)(5) and TPDES CAFO General Permit No. TXG920117, Part III.A.9(b)(2)].</p> <p>3) Failure to provide a capacity certification for RCS No. 2, RCS No. 3, and RCS No. 4 [30 TEX. ADMIN. CODE § 321.38(g)(3)(E) and TPDES CAFO General Permit No. TXG920117, Part III.A.6(a)(2)].</p> <p>4) Failure to construct and manage the control facilities in a manner that will protect surface water [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 321.36(c) and TPDES CAFO General Permit No. TXG920117, Part V.B.].</p>	<p>Total Assessed: \$8,085</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$8,085</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>Findings Orders Justification: The Respondent has three repeated enforcement actions for the same violation over the prior five year period.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On April 1, 2008, removed and properly disposed of the silage;</p> <p>b. On May 19, 2008, reconstructed the berm and covered the compost pile with plastic; and</p> <p>c. By July 24, 2008, submitted a Notice of Change and a Closure Plan to the TCEQ Permitting Team, stating that RCS Nos. 2, 3, and 4 are no longer being used and are being converted into freshwater ponds.</p>

Additional ID No(s): TXG920117



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	2-Jun-2008	Screening	24-Jun-2008	EPA Due	
	PCW	10-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kempenaar Real Estate, LTD. dba Still Meadow Dairy
Reg. Ent. Ref. No.	RN101523629
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36107	No. of Violations	4
Docket No.	2008-1041-AGR-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Brister
		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	\$6,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	39.0% Enhancement	Subtotals 2, 3, & 7	\$2,535
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Notes: The penalty is enhanced because the Respondent received two NOVs with violations same or similar to those cited in this case, received two NOVs for violations not same or similar, and was issued an Agreed Order without a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$950
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$140
 Approx. Cost of Compliance \$9,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,085
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$8,085
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,085
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$8,085
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Screening Date 24-Jun-2008

Docket No. 2008-1041-AGR-E

PCW

Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy

Policy Revision 2 (September 2002)

Case ID No. 36107

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101523629

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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	2	4%
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	1	25%
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%

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) 39%

>> **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 penalty is enhanced because the Respondent received two NOVs with violations same or similar to those cited in this case, received two NOVs for violations not same or similar, and was issued an Agreed Order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 39%

Screening Date 24-Jun-2008 **Docket No.** 2008-1041-AGR-E **PCW**

Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy *Policy Revision 2 (September 2002)*
Case ID No. 36107 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101523629

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code § 321.31(a) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920117, Part II.A

Violation Description Failed to prevent the unauthorized discharge of agricultural wastewater from a CAFO. Specifically, runoff from the compost area entered a tributary of East Caney Creek, as documented during an investigation conducted on March 31, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential				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 Number of violation days 49

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date (March 31, 2008) to the date of compliance (May 19, 2008).

Good Faith Efforts to Comply 25.0% Reduction \$250

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

Notes The Respondent achieved compliance on May 19, 2008.

Violation Subtotal \$750

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

Estimated EB Amount \$20 **Violation Final Penalty Total** \$1,140

This violation Final Assessed Penalty (adjusted for limits) \$1,140

Economic Benefit Worksheet

Respondent: Kempenaar Real Estate, LTD. dba Still Meadow Dairy
Case ID No.: 36107
Reg. Ent. Reference No.: RN101523629
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$3,000	31-Mar-2008	19-May-2008	0.13	\$20	n/a	\$20

Notes for DELAYED costs

Estimated cost to construct control facilities for the manure compost area and cover the area with plastic. Date Required is the date of the investigation. 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

\$3,000

TOTAL

\$20

Screening Date 24-Jun-2008 **Docket No.** 2008-1041-AGR-E **PCW**
Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy *Policy Revision 2 (September 2002)*
Case ID No. 36107 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101523629
Media [Statute] Water Quality
Enf. Coordinator Heather Brister

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 321.39(b)(5) and TPDES CAFO General Permit No. TXG920117, Part III.A.9(b)(2)
Violation Description Failed to ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner. Specifically, trees were observed on the levees of RCS No. 2, RCS No. 3, and RCS No. 4, as documented during an investigation conducted on March 31, 2008.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="5%"/>	

>> Programmatic Matrix

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

Matrix Notes Human health or the environment could be exposed to insignificant amounts of pollutants that would not exceed levels 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"/>
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 single events, one for each RCS, are recommended.

Good Faith Efforts to Comply Reduction

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

Notes The Respondent achieved compliance by July 24, 2008.

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: Kempenaar Real Estate, LTD. dba Still Meadow Dairy
Case ID No.: 36107
Reg. Ent. Reference No.: RN101523629
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)	\$2,000	31-Mar-2008	24-Jul-2008	0.32	\$32	n/a	\$32

Notes for DELAYED costs: Estimated cost to remove trees from the three RCSs. Date Required is the date of the investigation. 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

\$2,000

TOTAL

\$32

Screening Date 24-Jun-2008 **Docket No.** 2008-1041-AGR-E **PCW**

Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy *Policy Revision 2 (September 2002)*

Case ID No. 36107 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101523629

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 321.38(g)(3)(E) and TPDES CAFO General Permit No. TXG920117, Part III.A.6(a)(2)

Violation Description Failed to provide a capacity certification for RCS No. 2, RCS No. 3, and RCS No. 4, as documented during an investigation conducted on March 31, 2008.

Base Penalty \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		
100% of the rule requirement was not met.					
Adjustment					\$9,000

Violation Events

Number of Violation Events: 3 85 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$3,000

Three single events, one for each of the required RCS certifications, are recommended.

Good Faith Efforts to Comply 10.0% Reduction \$300

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

Notes The Respondent achieved compliance on July 24, 2008

Violation Subtotal \$2,700

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

Estimated EB Amount: \$88 Violation Final Penalty Total: \$3,870

This violation Final Assessed Penalty (adjusted for limits) \$3,870

Economic Benefit Worksheet

Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy
Case ID No. 36107
Reg. Ent. Reference No. RN101523629
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$4,000	31-Mar-2008	24-Jul-2008	0.32	\$4	\$84	\$88
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 to submit a Notice of Change and a Closure Plan for RCS Nos. 2, 3, and 4. Date required is the date of the investigation. 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

\$4,000

TOTAL

\$88

Screening Date 24-Jun-2008	Docket No. 2008-1041-AGR-E	PCW
Respondent Kempenaar Real Estate, LTD. dba Still Meadow Dairy	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36107	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN101523629		
Media [Statute] Water Quality		
Enf. Coordinator Heather Brister		
Violation Number <input type="text" value="4"/>		
Rule Cite(s)	30 Tex. Admin. Code § 321.36(c), Tex. Water Code § 26.121(a), and TPDES CAFO General Permit No. TXG920117, Part V.B	
Violation Description	Failed to construct and manage the control facilities in a manner that will protect surface water. Specifically, runoff from the silage storage area was observed during the March 31, 2008 investigation.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply **25.0% Reduction**

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

Notes The Respondent came into compliance on April 1, 2008.

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: Kempenaar Real Estate, LTD. dba Still Meadow Dairy

Case ID No.: 36107

Reg. Ent. Reference No.: RN101523629

Media: Water Quality

Violation No.: 4

Percent Interest	Years of Depreciation
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$500	31-Mar-2008	1-Apr-2008	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the silage from the drainage area. Date Required is the date of the investigation. Final Date is the date of compliance.

Avoided Costs

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

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

\$500

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN602629222	Kempenaar Real Estate, LTD.	Classification: AVERAGE	Rating: 23.6
Regulated Entity:	RN101523629	STILL MEADOW DAIRY	Classification: AVERAGE	Site Rating:
ID Number(s):	WASTEWATER AGRICULTURE		PERMIT	TXG920117
	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	59213

Location: Located along County Road 2346 at the intersection of County Road 2346 and County Road 2333 and approximately one-half mile west of the intersection of County Road 2333 and Farm-To-Market Road 269, Hopkins County, Texas

Rating Date: September 01 (Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: June 03, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2003 to June 03, 2008

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

Name: Heather Brister Phone: 254/761-3034

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

Effective Date: 09/21/2006 ADMINORDER 2006-0415-AGR-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 321, SubChapter B 321.31(a)

Rqmt Prov: TXG920000 Part II.A PERMIT

Description: Failure to prevent the discharge of wastewater from the operations of a CAFO into surface waters in the state.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.44(a)

Rqmt Prov: TXG920000 Part IV.B(5) PERMIT

Description: Failure to orally notify the executive director and regional office within 24 hours of a discharge.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.44(b)(1)

Rqmt Prov: TXG920000 Part III A.5(c) PERMIT

Description: Failure of the operator to collect and analyze a grab sample of the discharge for BOD5, total coliform, total dissolved solids, total suspended solids, nitrate, ammonia nitrogen, total phosphorus, and pesticides.

Classification: Moderate

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

Rqmt Prov: TXG920000 Part III.A.10(c) PERMIT

Description: Failure to collect four different carcasses within 24 hours of death and properly dispose of the carcasses within three days of death in accordance with Texas Water Code, Chapter 26; Texas Health and Safety Code, Chapter 361; and Chapter 335 of this title unless otherwise provided for by the commission.

- 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	12/30/2003	(258091)
2	03/04/2005	(346891)
3	05/18/2005	(380243)
4	01/11/2006	(451168)
5	02/10/2006	(452875)
6	08/30/2006	(481708)
7	12/07/2006	(533143)
8	07/31/2007	(567782)
9	02/07/2008	(616352)
10	05/30/2008	(670694)

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

Date: **03/17/2005** (346891)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.38

Description: Failure to not locate a new holding pen within the required well buffer zones without a variance:
(1) public drinking water supply wells - 500 feet;
(2) drinking water wells used for private water supply - 150 feet; or
(3) water wells used exclusively for agriculture irrigation - 100 feet.

Date: **01/23/2006** (451407)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to prevent the unauthorized discharge of wastewater from a confined animal feeding operation adjacent to waters in the state.

Date: **09/08/2006** (481708)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.38(e)

Rqmt Prov: PERMIT Part III.A.6.(f)

Description: Failure of the operator to include in the PPP laboratory certified compaction tests for the embankment constructions/modifications. The embankments of the RCS should be constructed in accordance with the American Society of Testing Materials (ASTM D698) or equivalent testing standards.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(4)

Rqmt Prov: PERMIT Part IV.A.2.(a)

Description: FY06 CCI - Failure of the operator to create and maintain a weekly log of the wastewater levels in the RCS.

Date: **06/08/2007** (561756)

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)

Rqmt Prov: PERMIT Part V.B.

Description: Failure to prevent the unauthorized discharge or wastewater from the operations of a Concentrated Animal Feeding Operation into or adjacent to waters in the State.

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 321, SubChapter B 321.31(a)

Rqmt Prov: PERMIT Part V.B.

Description: Failure to prevent the unauthorized discharge of wastewater from a waste application field of a Concentrated Animal Feeding Operation 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

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23.64

07

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KEMPENAAR REAL ESTATE, LTD. DBA
STILL MEADOW DAIRY
RN101523629

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2008-1041-AGR-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kempenaar Real Estate, LTD. dba Still Meadow 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 presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a dairy located along County Road 2346 at the intersection of County Road 2346 and County Road 2333 and approximately one-half mile west of the

intersection of County Road 2333 and Farm-To-Market Road 269, in Hopkins County, Texas (the "Facility").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on March 31, 2008, the Respondent did not prevent the unauthorized discharge from the manure compost area. Specifically, contaminated runoff from the compost area was observed to have entered a tributary of East Caney Creek.
4. During an investigation on March 31, 2008, the Respondent did not ensure that retention control structure ("RCS") liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner. Specifically, trees were observed on the levees of RCS No.2, RCS No.3, and RCS No.4.
5. During an investigation on March 31, 2008, the Respondent did not provide capacity certifications for RCS No. 2, RCS No. 3, and RCS No. 4.
6. During an investigation on March 31, 2008, the Respondent did not construct and manage the control facilities in a manner that would protect surface water. Specifically, runoff from the silage storage area was observed.
7. The Respondent received notice of the violations on May 31, 2008.
8. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On April 1, 2008, removed and properly disposed of the silage;
 - b. On May 19, 2008, reconstructed the berm and covered the compost pile with plastic; and
 - c. By July 24, 2008, submitted a Notice of Change and a Closure Plan to the TCEQ Permitting Team, stating that RCS Nos. 2, 3, and 4 are no longer being used and are being converted into freshwater ponds.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of agricultural wastewater from a Concentrated Animal Feeding Operation ("CAFO"), in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 321.31(a), and Texas

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Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920117, Part II.A, as documented during an investigation conducted on March 31, 2008.

3. As evidenced by Findings of Fact No. 4, the Respondent failed to ensure that RCS liners are protected from animals by fences or other protective devices and that no tree is allowed to grow such that the root zone would intrude or compromise the structure of the liner, in violation of 30 TEX. ADMIN. CODE § 321.39(b)(5) and TPDES CAFO General Permit No. TXG920117, Part III.A.9(b)(2), as documented during an investigation conducted on March 31, 2008.
4. As evidenced by Findings of Fact No. 5, the Respondent failed to provide a capacity certification for RCS No. 2, RCS No. 3, and RCS No. 4, in violation of 30 TEX. ADMIN. CODE § 321.38(g)(3)(E) and TPDES CAFO General Permit No. TXG920117, Part III.A.6(a)(2), as documented during an investigation conducted on March 31, 2008.
5. As evidenced by Findings of Fact No. 6, the Respondent failed to construct and manage the control facilities in a manner that will protect surface water, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 321.36(c) and TPDES CAFO General Permit No. TXG920117, Part V.B.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of Eight Thousand Eighty-Five Dollars (\$8,085) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Eight Thousand Eighty-Five Dollar (\$8,085) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Eight Thousand Eighty-Five Dollars (\$8,085) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kempenaar Real Estate, LTD. dba Still Meadow Dairy, Docket No. 2008-1041-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 provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. 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.
6. 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.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan
For the Executive Director

12/29/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Kempenaar Real Estate, LTD. dba Still Meadow Dairy I am authorized to agree to the attached Agreed Order on behalf of Kempenaar Real Estate, LTD. dba Still Meadow Dairy, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Kempenaar Real Estate, LTD. dba Still Meadow Dairy waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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]
Signature

10 21 2008
Date

Jack H Kempenaar
Name (Printed or typed)
Authorized Representative of
Kempenaar Real Estate, LTD. dba Still Meadow Dairy

President
Title

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

