

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1974-MLM-E **TCEQ ID:** RN104886536 **CASE NO.:** 34947
RESPONDENT NAME: Dr. Gobbler, Ltd.

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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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: Dr. Gobbler Moore Farm Property, 4123 Farm-to-Market Road 56, near Clifton, Bosque County</p> <p>TYPE OF OPERATION: Livestock manure composting facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received September 5, 2007, concerning an unauthorized discharge from the retention basin. 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 December 1, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. David W. Neal, Owner, Dr. Gobbler, Ltd., P.O. Box 490, Hewitt, Texas 76643 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 5, 2007</p> <p>Date of Investigation Relating to this Case: September 17, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 15, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failure to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, on May 29, 2007, an unauthorized discharge occurred from the east berm of the retention pond [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 330.303(a), and Texas Natural Resource Conservation Commission ("TNRCC") General Permit No. WQG200006, Part II, Section B.2].</p> <p>2) Failure to meet the minimum design criteria for retention facilities. Specifically, the retention pond had several sections that had a top freeboard of less than two feet [30 TEX. ADMIN. CODE § 317.4(j)(9) and TNRCC General Permit No. WQG200006, Part III, Section B.2(b)].</p>	<p>Total Assessed: \$1,575</p> <p>Total Deferred: \$315 <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: \$1,260</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>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 September 7, 2007, purchased an irrigation pump;</p> <p>b. On September 12, 2007, purchased an irrigation gun and related equipment; and</p> <p>c. On September 10, 2007, purchased 200 feet of irrigation pipe.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin maintaining the retention pond to prevent any discharges of wastewater from the Facility;</p> <p>b. Within 30 days after the effective date of this Agreed Order, reduce the water level in the retention pond to maintain a freeboard of at least two feet; and</p> <p>c. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): WQG200000



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	15-Oct-2007	Screening	9-Nov-2007	EPA Due	
	PCW	14-Dec-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dr. Gobbler, Ltd.
Reg. Ent. Ref. No.	RN104886536
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34947	No. of Violations	2
Docket No.	2007-1974-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Pamela Campbell
Multi-Media	Industrial and Hazardous Waste	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	\$1,500
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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	5% Enhancement	Subtotals 2, 3, & 7	\$75
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Notes The Respondent has one NOV for the same violation.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent is not yet in compliance.

Good Faith Effort to Comply	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$389	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$12,276	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,575
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$1,575
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,575
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DEFERRAL	20% Reduction	Adjustment	-\$315
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,260
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Screening Date	9-Nov-2007	Docket No.	2007-1974-MLM-E	PCW
Respondent	Dr. Gobbler, Ltd.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	34947	<i>PCW Revision November 6, 2007</i>		
Reg. Ent. Reference No.	RN104886536			
Media [Statute]	Water Quality			
Enf. Coordinator	Pamela Campbell			

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>	1	5%
	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 judgments 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) 5%

>> Repeat Violator (Subtotal 3)

No	Adjustment Percentage (Subtotal 3) 0%
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>> Compliance History Person Classification (Subtotal 7)

Average Performer	Adjustment Percentage (Subtotal 7) 0%
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>> Compliance History Summary

Compliance History Notes

The Respondent has one NOV for the same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 9-Nov-2007	Docket No. 2007-1974-MLM-E	PCW
Respondent Dr. Gobbler, Ltd.	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34947	<small>PCW Revision November 6, 2007</small>	
Reg. Ent. Reference No. RN104886536		
Media [Statute] Water Quality		
Enf. Coordinator Pamela Campbell		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 330.303(a), and Texas Natural Resource Conservation Commission ("TNRCC") General Permit No. WQG200006 Part II, Section B.2	
Violation Description	Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, on May 29, 2007 an unauthorized discharge occurred from the east berm of the retention pond, as documented during the September 17, 2007 investigation.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	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"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate	Minor	
	<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 did not exceed levels protective of human health or the environment as a result of this violation.				Percent <input type="text" value="0%"/>
Adjustment					<input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events Number of violation days

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

mark only one with an x

Violation Base Penalty

One quarterly event is recommended from the investigation date (September 17, 2007) to the screening date (November 9, 2007).

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$201"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Dr. Gobbler, Ltd.
Case ID No. 34947
Reg. Ent. Reference No. RN104886536
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$3,000	17-Sep-2007	1-Sep-2008	1.0	\$10	\$192	\$201
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This is the estimated cost to repair the cut-out in the basin wall to prevent wastewater from discharging from the retention pond. The date required is the investigation date and the final date is the anticipated 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$3,000

TOTAL

\$201

Screening Date 9-Nov-2007	Docket No. 2007-1974-MLM-E	PCW
Respondent Dr. Gobbler, Ltd.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34947	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN104886536		
Media [Statute] Water Quality		
Enf. Coordinator Pamela Campbell		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 317.4(j)(9) and TNRCC General Permit No. WQG200006 Part III, Section B.2(b)	
Violation Description	Failed to meet the minimum design criteria for retention facilities. Specifically, the retention pond had several sections that had a top freeboard of less than two feet.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed levels protective of human health or the environment as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One quarterly event is recommended from the investigation date (September 17, 2007) to the screening date (November 9, 2007).

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 Dr. Gobbler, Ltd.
Case ID No. 34947
Reg. Ent. Reference No. RN104886536
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	\$8,276	29-Jun-2007	13-Sep-2007	0.2	\$6	\$115	\$121
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,000	17-Sep-2007	1-Sep-2008	1.0	\$3	\$64	\$67
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs This is the estimated cost to lower the freeboard in the retention ponds and the costs that the Respondent incurred for pumps, pipes, and an irrigation gun. The dates required are the investigation dates and the final dates are the dates that the Respondent submitted documentation verifying that the above mentioned equipment was purchased and the anticipated date when the two foot freeboard requirement will be met.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$9,276	TOTAL	\$188
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Compliance History

Customer/Respondent/Owner-Operator:	CN602984221	Dr. Gobbler, Ltd.	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN104886536	DR GOBBLER MOORE FARM PROPERTY	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	STORMWATER	PERMIT		TXR05S883
Location:	4123 FM 56, NEAR CLIFTON, BOSQUE COUNTY, TX		Rating Date: September 01 07	Repeat Violator:
TCEQ Region:	REGION 09 - WACO		NO	
Date Compliance History Prepared:	November 09, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 09, 2002 to November 09, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Pamela Campbell	Phone:	512 239-4493	

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.
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. (CEEDS Inv. Track. No.)
1 08/14/2007 (571368)
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
Date: 08/14/2007 (571368)
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 330, SubChapter L 330.303(a)
Rqmt Prov: PERMIT WQG200000, Part II, Section B, 1
Description: Failure to prevent an unauthorized discharge of wastewater into or adjacent to
water 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
DR. GOBBLER, LTD.
RN104886536

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§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1974-MLM-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 Dr. Gobbler, Ltd. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and 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 livestock manure composting facility located at 4123 Farm-to-Market Road 56 near Clifton, Bosque County, Texas (the "Facility").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. 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.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 20, 2007.
6. 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.

7. An administrative penalty in the amount of One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Sixty Dollars (\$1,260) of the administrative penalty and Three Hundred Fifteen Dollars (\$315) is deferred contingent upon 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.
8. 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.
9. 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.
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On September 7, 2007, purchased an irrigation pump;
 - b. On September 12, 2007, purchased an irrigation gun and related equipment; and
 - c. On September 10, 2007, purchased 200 feet of irrigation pipe.
11. 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.
12. 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.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 330.303(a), and Texas Natural Resource Conservation Commission ("TNRCC") General Permit No. WQG200006, Part II, Section B.2, as documented during an investigation conducted on September 17, 2007. Specifically, on May 29, 2007 an unauthorized discharge occurred from the east berm of the retention pond.

2. Failed to meet the minimum design criteria for retention facilities, in violation of 30 TEX. ADMIN. CODE § 317.4(j)(9) and TNRCC General Permit No. WQG200006, Part III, Section B.2(b), as documented during an investigation conducted on September 17, 2007. Specifically, the retention pond had several sections that had a top freeboard of less than two feet.

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: Dr. Gobbler, Ltd., Docket No. 2007-1974-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order, begin maintaining the retention pond to prevent any discharges of wastewater from the Facility, in accordance with TNRCC General Permit No. WQG200006, Part III, Section B.2(b);
 - b. Within 30 days after the effective date of this Agreed Order, reduce the water level in the retention pond to maintain a freeboard of at least two feet; and
 - c. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

Dr. Gobbler, Ltd.

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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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SIGNATURE PAGE

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 not 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.

For the Commission
Agar S. Garcia
For the Executive Director

Date
12/15/08

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

Name (Printed or typed) David W. Nease
Authorized Representative of Dr. Gobler, Ltd.
Signature [Signature]
Title OWNER
Date 2/20/08

