

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1113-IWD-E **TCEQ ID:** RN103896163 **CASE NO.:** 36098

**RESPONDENT NAME:** AUSTWELL AQUA FARM, INC.

<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> Austwell Aqua Farm, located adjacent to Farm-to-Market Road 2040, approximately three miles southeast of the City of Austwell, Refugio County</p> <p><b>TYPE OF OPERATION:</b> Aquaculture facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 1, 2008. 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. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Charles Chan, President, AUSTWELL AQUA FARM, INC., P.O. Box 125, Austwell, Texas 77950  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 28, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 4, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to comply with permitted effluent limits for biochemical oxygen demand and total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03995, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$1,270</p> <p><b>Total Deferred:</b> \$254  <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 (Due) to General Revenue:</b> \$116 (remaining \$900 due in 9 monthly payments of \$100 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</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>Ordering Provisions:</b></p> <p>The Order will require the Respondent to, within 365 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. 03995, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least two consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0003995000



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	Assigned	9-Jun-2008			
	PCW	24-Jun-2008	Screening	23-Jun-2008	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	AUSTWELL AQUA FARM, INC.		
Reg. Ent. Ref. No.	RN103896163		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36098	No. of Violations	1
Docket No.	2008-1113-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		<i>Subtotal 1</i>	\$1,000
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
<b>Compliance History</b>	27.0% Enhancement	<i>Subtotals 2, 3, &amp; 7</i>	\$270
Notes	The penalty is enhanced due to five self-reported monthly effluent violations and one NOV with unrelated violations.		
<b>Culpability</b>	No 0.0% Enhancement	<i>Subtotal 4</i>	\$0
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<i>Subtotal 5</i>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
Total EB Amounts	\$1,519	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$10,000		
<b>SUM OF SUBTOTALS 1-7</b>		<i>Final Subtotal</i>	\$1,270
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		0.0% Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
Notes			
			<i>Final Penalty Amount</i> \$1,270
<b>STATUTORY LIMIT ADJUSTMENT</b>		<i>Final Assessed Penalty</i>	\$1,270
<b>DEFERRAL</b>		20.0% Reduction Adjustment	-\$254
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>			\$1,016

Screening Date 23-Jun-2008

Docket No. 2008-1113-IWD-E

PCW

Respondent AUSTWELL AQUA FARM, INC.

Policy Revision 2 (September 2002)

Case ID No. 36098

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN103896163

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	5	25%
	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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 27%

>> 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 due to five self-reported monthly effluent violations and one NOV with unrelated violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 27%

<b>Screening Date</b> 23-Jun-2008	<b>Docket No.</b> 2008-1113-IWD-E	<b>PCW</b>		
<b>Respondent</b> AUSTWELL AQUA FARM, INC.		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 36098		<i>PCW Revision June 12, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN103896163				
<b>Media [Statute]</b> Water Quality				
<b>Enf. Coordinator</b> Steve Villatoro				
<b>Violation Number</b> 1				
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03995, Effluent Limitations and Monitoring Requirements No. 1			
<b>Violation Description</b>	Failed to comply with permit effluent limits, as documented during a record review conducted on April 28, 2008 and shown in the attached table.			
	<b>Base Penalty</b>	\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	Release	Major	Moderate	Minor
	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>				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Percent</b>			0%
<b>Matrix Notes</b>	A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Also total suspended solids were considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.			
	<b>Adjustment</b>			\$9,000
				\$1,000
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	1	<b>Number of violation days</b>	61
<i>mark only one with an x</i>	daily	<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"/>		
	<b>Violation Base Penalty</b>			\$1,000
One quarterly event is recommended.				
<b>Good Faith Efforts to Comply</b>				
	0.0% Reduction			\$0
	Before NOV	NOV to EDP RP/Settlement Offer		
	Extraordinary	<input type="checkbox"/>		
	Ordinary	<input type="checkbox"/>		
	N/A	<input checked="" type="checkbox"/>	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
	<b>Violation Subtotal</b>			\$1,000
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
	<b>Estimated EB Amount</b>	\$1,519	<b>Violation Final Penalty Total</b>	\$1,270
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$1,270

## Economic Benefit Worksheet

**Respondent:** AUSTWELL AQUA FARM, INC.  
**Case ID No.:** 36098  
**Reg. Ent. Reference No.:** RN103896163  
**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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$10,000	31-Oct-2007	31-Dec-2009	2.17	\$72	\$1,447	\$1,519
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated costs to conduct engineering study to determine cause of noncompliance and to implement corrective actions. Date required is the first date of noncompliance. Final date is the expected date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

<b>Approx. Cost of Compliance</b>	\$10,000	<b>TOTAL</b>	\$1,519
-----------------------------------	----------	--------------	---------

EFFLUENT VIOLATION TABLE			
AUSTWELL AQUA FARM, INC.			
TPDES Permit No. 03995			
Docket No. 2008-1113-IWD-E			
Months	BOD Daily Avg. Conc.	BOD Daily Max. Conc.	TSS Daily Max. Conc.
	Limit = 10 mg/L	Limit = 20 mg/L	Limit = 45 mg/L
Outfall 001A			
10/31/2007	c	c	92
11/30/2007	22	48	82

conc. = concentration

avg. = average

Max. = Maximum

TSS = Total Suspended Solids

mg/L = milligrams per liter

c = compliant

BOD = Biochemical Oxygen Demand





## Compliance History

Customer/Respondent/Owner-Operator:	CN602406779	AUSTWELL AQUA FARM, INC.	Classification: AVERAGE	Rating: 0.76
Regulated Entity:	RN103896163	AUSTWELL AQUA FARM	Classification: AVERAGE	Site Rating: 0.76
ID Number(s):	WASTEWATER	PERMIT	WQ0003995000	
	WASTEWATER	EPA ID	TX0115002	
	WASTEWATER	PERMIT	TX0115002	
Location:	LOCATED ADJACENT TO FM 2040 APPROXIMATELY 3 MILES SE OF THE CITY OF AUSTWELL, REFUGIO COUNTY		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	June 09, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 10, 2003 to June 10, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Steve Villatoro	Phone:	512-239-4930	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 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. (CCEDS Inv. Track. No.)

- |    |            |          |
|----|------------|----------|
| 1  | 11/28/2005 | (491333) |
| 2  | 11/28/2005 | (491334) |
| 3  | 11/28/2005 | (491335) |
| 4  | 11/28/2005 | (491336) |
| 5  | 12/27/2005 | (491337) |
| 6  | 02/03/2006 | (491331) |
| 7  | 02/27/2006 | (491332) |
| 8  | 03/30/2006 | (505739) |
| 9  | 05/02/2006 | (505740) |
| 10 | 06/05/2006 | (505741) |
| 11 | 06/30/2006 | (527997) |
| 12 | 08/11/2006 | (527998) |
| 13 | 09/13/2006 | (527999) |
| 14 | 10/13/2006 | (551555) |
| 15 | 11/15/2006 | (551556) |
| 16 | 11/16/2006 | (519294) |
| 17 | 12/11/2006 | (551557) |
| 18 | 01/09/2007 | (535743) |
| 19 | 01/18/2007 | (588577) |
| 20 | 02/16/2007 | (588572) |
| 21 | 03/14/2007 | (588573) |
| 22 | 04/18/2007 | (588574) |
| 23 | 05/29/2007 | (588575) |
| 24 | 06/25/2007 | (588576) |
| 25 | 07/19/2007 | (605510) |
| 26 | 08/27/2007 | (605511) |
| 27 | 10/03/2007 | (630053) |
| 28 | 10/29/2007 | (630054) |
| 29 | 11/26/2007 | (630055) |
| 30 | 01/02/2008 | (676897) |
| 31 | 04/24/2008 | (676898) |
| 32 | 06/05/2008 | (654308) |

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

Date	10/31/2005	(491335)		
Self Report?	YES		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	10/31/2006	(551556)		
Self Report?	YES		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter .			
Date	11/16/2006	(519294)		
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.6 30 TAC Chapter 319, SubChapter A 319.9(c)			
Description:	Failure to assure the quality of all measurements through the use of blanks, standards, duplicate analyses, and spikes, using at a minimum the quality assurance requirements specified in 30 TAC 319.9 Table C for Oxygen (dissolved).			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.6 30 TAC Chapter 319, SubChapter A 319.9(c)			
Description:	Failure to assure the quality of all measurements through the use of blanks, standards, duplicate analyses, and spikes, using at a minimum the quality assurance requirements specified in 30 TAC 319.9 Table C for pH.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT OTHER REQUIREMENTS 10. (page 13)			
Description:	Failure to conduct sampling of the Inorganic Suspended Solids (ISS) level for Hynes Bay at the location approved by the TCEQ, once per week for a period of one year following permit issuance.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT Other Requirements 7. (page13)			
Description:	Failure to develop an Emergency Plan.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT Best Management Practices (BMP) 1 (pg16)			
Description:	Failure to submit a copy of the Best Management Practices (BMP) plan to the TCEQ Region 14 Office and the TCEQ Wastewater Permitting Section, Industrial Permits Team MC-148 (P.O. Box 13087, Austin, Texas 78711-3087) within sixty (60) days of permit issuance.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT Effluent Limits and Monitoring 1. (pg 2)			
Description:	Failure to monitor dissolved oxygen once per day when discharging.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT Effluent Limits and Monitoring 2 (pg 2)			
Description:	Failure to monitor pH once per day when discharging.			
Self Report?	NO		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT Other Requirements 4. (page 12)			
Description:	Failure to give notice to the TCEQ's Water Quality Division, Industrial Permits Team (MC-148), prior to a change in, or addition to, the species of organism cultivated at this facility.			
Date	11/30/2006	(551557)		
Self Report?	YES		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	10/31/2007	(630055)		
Self Report?	YES		Classificatio	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date	11/30/2007	(676897)		
Self Report?	YES		Classificatio	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			

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  
AUSTWELL AQUA FARM, INC.  
RN103896163

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1113-IWD-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 AUSTWELL AQUA FARM, INC. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an aquaculture facility located adjacent to Farm-to-Market Road 2040, approximately three miles southeast of the City of Austwell, Refugio County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 9, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Two Hundred Seventy Dollars (\$1,270) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). The Respondent has paid One Hundred Sixteen Dollars (\$116) of the administrative penalty and Two Hundred Fifty-Four Dollars (\$254) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Nine Hundred Dollars (\$900) of the administrative penalty shall be payable in nine monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03995, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on April 28, 2008 and shown in the following table:





EFFLUENT VIOLATION TABLE			
Months	BOD Daily Avg. Conc.	BOD Daily Max. Conc.	TSS Daily Max. Conc.
	Limit = 10 mg/L	Limit = 20 mg/L	Limit = 45 mg/L
Outfall 001A			
10/31/2007	c	c	92
11/30/2007	22	48	82

conc. = concentration                      avg. = average  
 TSS = Total Suspended Solids          Max. = Maximum  
 mg/L = milligrams per liter              c = compliant  
 BOD = Biochemical Oxygen Demand

**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: AUSTWELL AQUA FARM, INC., Docket No. 2008-1113-IWD-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, within 365 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. 03995, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least two consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance



with this Ordering Provision. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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  
Corpus Christi Regional Office  
Texas Commission on Environmental Quality  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

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.



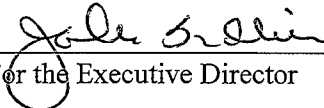
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

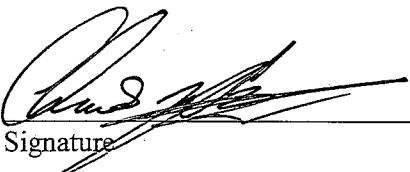
\_\_\_\_\_  
Date 1/23/2009

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 11/28/08

CHARLES CHAN  
Name (Printed or typed)  
Authorized Representative of  
AUSTWELL AQUA FARM, INC.

\_\_\_\_\_  
Title pro.

**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.

