

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1146-AGR-E TCEQ ID: RN102313384 CASE NO.: 36211

RESPONDENT NAME: Klaas Talsma dba Talsma Dairy

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Talsma Dairy, 7469 County Road 209, Erath County</p> <p>TYPE OF OPERATION: Dairy farm</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional pending enforcement action regarding this facility location, Docket No. 2007-0543-AGR-E.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Klaas Talsma, Owner, Talsma Dairy, 7469 County Road 209, Hico, Texas 76457 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 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: May 5, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 25, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to prevent an unauthorized discharge of wastewater from a concentrated animal feeding operation ("CAFO") into or adjacent to water in the state. Specifically, approximately 60,000 gallons of slurry waste was discharged on May 5, 2008 from a new retention control structure ("RCS") after a temporary berm failed during a rainfall event. The discharge flowed approximately 1,000 feet down County Road 540 into an unnamed creek where a sample was collected and analyzed for pollutant concentration levels [30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit. Specifically, a new RCS was constructed and in use prior to being permitted [30 TEX. ADMIN. CODE § 321.33(a)].</p>	<p>Total Assessed: \$10,815</p> <p>Total Deferred: \$2,163 <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: \$8,652</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. Began cleanup of County Road 540 on May 5, 2008; and</p> <p>b. Submitted a permit application to obtain authorization to operate a CAFO under an individual permit on May 30, 2008.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;</p> <p>b. Within 30 days after the effective date of this Agreed Order, remove all waste from the new RCS which discharged on May 5, 2008 and cease storing additional waste in the new RCS;</p> <p>c. Within 60 days after the effective date of this Agreed Order, complete the cleanup of any remaining slurry waste along County Road 540 and in the unnamed creek and properly dispose of the waste; and</p> <p>d. Within 360 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained, the operation has ceased until such time that appropriate authorization is obtained, or the number of cattle at the Facility has been reduced below that for a CAFO as defined by 30 TEX. ADMIN. CODE § 321.32(13). The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): TPDES 0130249



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	17-Jun-2008		
	PCW	16-Jul-2008	Screening	10-Jul-2008
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	Klaas Talsma dba Talsma Dairy		
Reg. Ent. Ref. No.	RN102313384		
Facility/Site Region	4-Stephenville	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36211	No. of Violations	2
Docket No.	2008-1146-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,500
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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	3.0% Enhancement	Subtotals 2, 3, & 7	\$315
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Notes: Enhancement for two NOVs with dissimilar violations issued for this site during the past five years. Credit is also given for one audit NOI.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$61
 Approx. Cost of Compliance: \$1,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,815
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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	\$10,815
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,815
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,163
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,652
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Screening Date 10-Jul-2008

Docket No. 2008-1146-AGR-E

PCW

Respondent Klaas Talsma dba Talsma Dairy

Policy Revision 2 (September 2002)

Case ID No. 36211

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102313384

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	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) 3%

>> **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

Enhancement for two NOVs with dissimilar violations issued for this site during the past five years. Credit is also given for one audit NOI.

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

Screening Date 10-Jul-2008	Docket No. 2008-1146-AGR-E	PCW																							
Respondent Klaas Talsma dba Talsma Dairy	<small>Policy Revision 2 (September 2002)</small>																								
Case ID No. 36211	<small>PCW Revision June 12, 2008</small>																								
Reg. Ent. Reference No. RN102313384																									
Media [Statute] Water Quality																									
Enf. Coordinator Thomas Jecha																									
Violation Number <input type="text" value="1"/>																									
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 321.31(a) and Tex. Water Code § 26.121(a)"/>																								
Violation Description	<input ("rcs")="" 1,000="" 2008="" 5,="" 540="" 60,000="" a="" adjacent="" after="" an="" approximately="" berm="" cafo")="" control="" county="" creek."="" discharge="" discharged="" down="" during="" event.="" failed="" feet="" flowed="" from="" gallons="" in="" into="" may="" new="" of="" on="" or="" rainfall="" retention="" road="" slurry="" specifically,="" state.="" structure="" temporary="" the="" to="" type="text" unnamed="" value="Failed to prevent an unauthorized discharge of wastewater from a concentrated animal feeding operation (" was="" waste="" water=""/>																								
Base Penalty	<input type="text" value="\$10,000"/>																								
>> Environmental, Property and Human Health Matrix																									
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td style="text-align: center;">Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td style="text-align: center;">x</td> <td></td> <td rowspan="2" style="text-align: right;">Percent <input type="text" value="25%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual		x		Percent <input type="text" value="25%"/>	Potential								
	Harm																								
Release	Major	Moderate	Minor																						
Actual		x		Percent <input type="text" value="25%"/>																					
Potential																									
>> Programmatic Matrix																									
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	Falsification	Major	Moderate	Minor																					
					Percent <input type="text" value="0%"/>																				
Matrix Notes	<input type="text" value="Human health and the environment has been exposed to significant amounts of pollutants as a result of this violation."/>																								
Adjustment	<input type="text" value="\$7,500"/>																								
<input type="text" value="\$2,500"/>																									
Violation Events																									
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Number of Violation Events</td> <td><input type="text" value="3"/></td> <td><input type="text" value="66"/></td> <td>Number of violation days</td> </tr> </table>	Number of Violation Events	<input type="text" value="3"/>	<input type="text" value="66"/>	Number of violation days																				
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	daily	<input type="text"/>																							
<i>mark only one with an x</i>	monthly	x																							
	quarterly	<input type="text"/>																							
	semiannual	<input type="text"/>																							
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Good Faith Efforts to Comply																									
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="text-align: center;">0.0% Reduction</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		0.0% Reduction			Before NOV	NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	x	(mark with x)	<input type="text" value="\$0"/>								
	0.0% Reduction																								
	Before NOV	NOV to EDRP/Settlement Offer																							
Extraordinary	<input type="text"/>	<input type="text"/>																							
Ordinary	<input type="text"/>	<input type="text"/>																							
N/A	x	(mark with x)																							
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																								
Violation Subtotal <input type="text" value="\$7,500"/>																									
Economic Benefit (EB) for this violation																									
Estimated EB Amount	<input type="text" value="\$61"/>	Statutory Limit Test																							
		Violation Final Penalty Total <input type="text" value="\$7,725"/>																							
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,725"/>																									

Economic Benefit Worksheet

Respondent Klaas Talsma dba Talsma Dairy
Case ID No. 36211
Reg. Ent. Reference No. RN102313384
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	5-May-2008	28-Feb-2009	0.82	\$61	n/a	\$61

Notes for DELAYED costs Estimated cost to obtain engineering certification and a permit for construction. The Date Required is the investigation date and the 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

Approx. Cost of Compliance	\$1,500	TOTAL	\$61
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Screening Date 10-Jul-2008	Docket No. 2008-1146-AGR-E	PCW		
Respondent Klaas Talsma dba Talsma Dairy		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36211		<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN102313384				
Media [Statute] Water Quality				
Enf. Coordinator Thomas Jecha				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 321.33(a)			
Violation Description	Failed to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit. Specifically, a new RCS was constructed and in use prior to being permitted.			
	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 type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
	Adjustment	<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
Violation Events				
	Number of Violation Events	<input type="text" value="3"/>	<input type="text" value="66"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
		Violation Base Penalty	<input type="text" value="\$3,000"/>	
	Three monthly events are recommended from the May 5, 2008 investigation until the July 10, 2008 screening date.			
Good Faith Efforts to Comply				
	<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>	
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal	<input type="text" value="\$3,000"/>	
Economic Benefit (EB) for this violation				
	Estimated EB Amount	<input type="text" value="\$0"/>	Violation Final Penalty Total	<input type="text" value="\$3,090"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,090"/>		

Economic Benefit Worksheet

Respondent Klaas Talsma dba Talsma Dairy
Case ID No. 36211
Reg. Ent. Reference No. RN102313384
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to prevent the unauthorized discharge of slurry waste is included in Economic Benefit for Violation No. 1.

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 \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN601214265 TALSMA, KLAAS Classification: AVERAGE Rating: 8.35
 Regulated Entity: RN102313384 TALSMA DAIRY Classification: AVERAGE Site Rating:31.10

ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0070L
	AIR NEW SOURCE PERMITS	PERMIT	20916
	WASTEWATER AGRICULTURE	PERMIT	WQ0003145000
	WASTEWATER AGRICULTURE	EPA ID	TX0130249
	WASTEWATER AGRICULTURE	PERMIT	WQ0003145000
	WASTEWATER AGRICULTURE	PERMIT	TPDES0130249
	WASTEWATER AGRICULTURE	PERMIT	TX0130249

Location: 7469 COUNTY ROAD 209, ERATH CO., TX Rating Date:September 01 07 Repeat Violator:NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepa July 08, 2008

Agency Decision Requiring Compliance Enforcement

Compliance Period: July 08, 2003 to July 08, 2008

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

Name: Thomas Jecha Phone: 512 239 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership 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 08/26/2003 (152520)
- 2 02/03/2004 (260380)
- 3 08/25/2005 (407076)
- 4 03/29/2006 (457762)
- 5 07/18/2006 (483309)
- 6 02/27/2007 (534784)
- 7 03/29/2007 (543798)
- 8 07/16/2007 (567696)
- 9 06/13/2008 (657127)

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

Date: 03/24/2006 (457762)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)

Description: FAILURE TO MAINTAIN THE DIVERSION BERM LOCATED AT THE SOUTHEAST PART OF THE PROPERTY.

Date: 03/02/2007 (534784)

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.40(1)		
Description:	Failure to construct facilities to maintain the runoff from silage areas.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.39(f)(11)		
Description:	Failure to clean the solids out of the settling basin to maintain the required stormwater capacity.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.40(8)		
Description:	Failure to manage the feed mixing area to prevent a nuisance condition or a hazard to the environment.		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.41(a)(1)		
Description:	Failure to complete the required DOPA training.		

F. Environmental audits.

Notice of Intent Date: 10/24/03 (262988)
 No DOV Associated

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
KLAAS TALSMA DBA TALSMA
DAIRY
RN102313384

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-1146-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Klaas Talsma dba Talsma Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy farm located at 7469 County Road 209, Erath 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 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 30, 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 Ten Thousand Eight Hundred Fifteen Dollars (\$10,815) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Six Hundred Fifty-Two Dollars

(\$8,652) of the administrative penalty and Two Thousand One Hundred Sixty-Three Dollars (\$2,163) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Began cleanup of County Road 540 on May 5, 2008; and
 - b. Submitted a permit application to obtain authorization to operate a concentrated animal feeding operation ("CAFO") under an individual permit on May 30, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent an unauthorized discharge of wastewater from a concentrated animal feeding operation ("CAFO") into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE § 321.31(a) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on May 5, 2008. Specifically, approximately 60,000 gallons of slurry waste was discharged on May 5, 2008 from a new retention control structure ("RCS") after a temporary berm failed during a rainfall event. The discharge flowed approximately 1,000 feet down County Road 540 into an unnamed creek where a sample was collected and analyzed for pollutant concentration levels. Results from the analyses are shown in the following table:

SAMPLE ANALYSES RESULTS	
Constituent Analyzed	Result (milligrams per liter)
Biochemical Oxygen Demand	10,800
Total Suspended Solids	24,900
Volatile Suspended Solids	17,300
Nitrite as Nitrogen ("N")	9.01
Ammonia as N	757
Total Kjeldahl Nitrogen	288
Total Phosphorus	309

2. Failed to obtain authorization to construct control facilities and operate a CAFO under a water quality general permit or individual permit, in violation of 30 TEX. ADMIN. CODE § 321.33(a), as documented during an investigation conducted on May 5, 2008. Specifically, a new RCS was constructed and in use prior to being permitted.

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: Klaas Talsma dba Talsma Dairy, Docket No. 2008-1146-AGR-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
 - b. Within 30 days after the effective date of this Agreed Order, remove all waste from the new RCS which discharged on May 5, 2008 and cease storing additional waste in the new RCS;
 - c. Within 60 days after the effective date of this Agreed Order, complete the cleanup of any remaining slurry waste along County Road 540 and in the unnamed creek and properly dispose of the waste; and

- d. Within 360 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained, the operation has ceased until such time that appropriate authorization is obtained, or the number of cattle at the Facility has been reduced below that for a CAFO as defined by 30 TEX. ADMIN. CODE § 321.32(13). The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

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

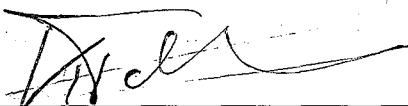
Date 1/23/2009

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 9-29-08

KLAAS TALSMA
Name (Printed or typed)
Authorized Representative of
Klaas Talsma dba Talsma Dairy

Title owner

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.

