EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1312-AGR-E TCEQ ID: RN102956455 CASE NO.: 34457
RESPONDENT NAME: JERRY DEAN HARRIS

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
X AGRICULTURE	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__ DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Approximately three miles south of Rising Star on County Road 441, Brown County

TYPE OF OPERATION: Concentrated animal feeding operation ("CAFO")

SMALL BUSINESS: X Yes ___ No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 25, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Air Enforcement Section, MC 149, (512) 239-0321
TCEQ Regional Contact: Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6115
Respondent: Mr. Jerry Dean Harris, 23200 County Road 441, Rising Star, Texas 76471
Respondent's Attorney: Ms. Courtney Cox, Attorney, Jackson Walker, LLP, 100 Congress Avenue, Suite 1100, Austin, Texas 78701

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** June 22, 2007 **Date of NOV Relating to this Case:** August 6, 2007 **Background Facts:** The EDPRP was filed on February 4, 2008. The case was referred to SOAH on May 19, 2008. An Agreed Order was signed on June 24, 2008. **Current Compliance Status:** Since the date the Agreed Order was signed, the Respondent obtained a CAFO water quality permit (no. TXG920999), thus, the Technical Requirements are now moot. **AGR:** Failed to obtain authorization to operate a CAFO through a CAFO general permit or an individual water quality permit [30 TEX. ADMIN. CODE § 321.33(a)]	**Total Assessed:** $2,000 **Total Deferred:** $0 __ Expedited Order __ Financial Inability to Pay __SEP Conditional Offset **Total Paid to General Revenue:** $2,000 The Respondent has paid the administrative penalty in full. **Site Compliance History Classification** __ High _X_ Average __ Poor **Person Compliance History Classification** __ High _X_ Average __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Technical Requirements:** The Respondent shall undertake the following technical requirements: 1. Within 30 days a. Reduce the number of cattle on site to less than 700; or b. Submit an administratively complete CAFO water quality general permit or an individual water quality permit. 2. Respond completely and adequately to all requests for information concerning the permit application within 30 days after the date of such requests or any other deadline specified in writing. 3. Within 45 days, submit written certification of compliance with 1.a. and 1.b. above. 4. Within 180 days, submit written certification that either authorization to operate a CAFO has been obtained, that the number of cattle has been reduced to less than 700, or that operation has ceased until appropriate authorization is obtained.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision June 26, 2007*

DATES					
Assigned	13-Aug-2007				
PCW	5-Dec-2007	Screening	20-Aug-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Jerry Dean Harris		
Reg. Ent. Ref. No.	RN102956455		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34457	No. of Violations	1
Docket No.	2007-1312-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Harvey Wilson
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 0% Enhancement — *Subtotals 2, 3, & 7* **$0**

Notes: No enhancement is recommended because the Respondent is classified as an average performer.

Culpability — No — 0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* **$0**

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$47
Approx. Cost of Compliance	$1,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$2,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount **$2,000**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$2,000**

DEFERRAL — Reduction — *Adjustment* **$0**

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **$2,000**

Screening Date 20-Aug-2007 **Docket No.** 2007-1312-AGR-E **PCW**

Respondent Jerry Dean Harris *Policy Revision 2 (September 2002)*

Case ID No. 34457 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102956455

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 0%

>> 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

No enhancement is recommended because the Respondent is classified as an average performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 20-Aug-2007 **Docket No.** 2007-1312-AGR-E **PCW**

Respondent Jerry Dean Harris *Policy Revision 2 (September 2002)*

Case ID No. 34457 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102956455

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.33(a)

Violation Description Failed to obtain authorization to operate a concentrated animal feeding operation through a CAFO general permit or an individual water quality permit. Specifically, Mr. Harris averaged more than 700 cows at the site at the time of the inspection.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 2 | 59 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,000

Two monthly events are recommended, from the investigation date of June 22, 2007, until the screening date of August 20, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $47

Statutory Limit Test

Violation Final Penalty Total $2,000

This violation Final Assessed Penalty (adjusted for limits) $2,000

Economic Benefit Worksheet

Respondent Jerry Dean Harris
Case ID No. 34457
Reg. Ent. Reference No. RN102956455
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
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)	$1,000	22-Jun-2007	1-Jun-2008	0.9	$47	n/a	$47

Notes for DELAYED costs: The estimated cost of preparing and submitting a Notice of Intent to TCEQ. Date Required is the date the violation was documented. Final Date is the estimated date of compliance.

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

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 $1,000

TOTAL $47

Compliance History

Customer/Respondent/Owner-Operator:	CN601502149	HARRIS, JERRY DEAN	Classification: Average	Rating:
Regulated Entity:	RN102956455	HARRIS DAIRY FARM	Classification: Average	Site Rating:

ID Number(s):

Location: 23200 CR 441, BROWN COUNTY, TX, 76471

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: August 14, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 14, 2002 to August 14, 2007

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

Name: Harvey Wilson Phone: 239-0321

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 08/07/2007 (565288)

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

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 AGAINST JERRY DEAN HARRIS; RN102956455	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1312-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jerry Dean Harris ("Mr. Harris") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Harris represented by Courtney Cox of the law firm Jackson Walker, L.L.P., appear before the Commission and together stipulate that:

1. Mr. Harris owns and operates a concentrated animal feeding operation ("CAFO") located approximately three miles south of Rising Star on County Road 441, Brown County, Texas (the "Site").

2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.

3. The Commission and Mr. Harris agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Harris is subject to the Commission's jurisdiction.

4. Mr. Harris received notice of the violations alleged in Section II ("Allegations") on or about August 11, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Harris of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two thousand dollars ($2,000.00) is assessed by the Commission in settlement of the violation alleged in Section II ("Allegations"). Mr. Harris has paid two thousand dollars ($2,000.00) of the administrative 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 Mr. Harris 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 Mr. Harris 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

Mr. Harris is alleged to have violated 30 TEX. ADMIN. CODE § 321.33(a) by failing to obtain authorization to operate a CAFO through a CAFO general permit or an individual water quality permit. Specifically, Mr. Harris averaged more than 700 cows at the Site, as documented during an inspection conducted on June 22, 2007.

III. DENIALS

Mr. Harris generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Harris pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Harris' 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 considering or requiring corrective action or penalties for violations which are not raised

here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Jerry Dean Harris, Docket No. 2007-1312-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. Mr. Harris shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, Mr. Harris shall either:

      i. Reduce the number of cattle on this site to less than 700; or

      ii. Submit an administratively complete CAFO water quality general permit or an individual water quality permit application to:

      Agriculture Core, Wastewater Permitting Section
      Water Quality Division, MC 148
      Texas Commission on Environmental Quality
      P. O. Box 13087
      Austin, Texas 78711-3087

   b. 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.

   c. Within 45 days after the effective date of this Agreed Order, Mr. Harris shall submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.e. below.

   d. Within 180 days after the effective date of this Agreed Order, Mr. Harris shall submit written certification that either authorization to operate a CAFO has been obtained, that the number of cattle has been reduced to less than 700, or that operation has ceased until appropriate authorization is obtained, as described in Ordering Provision No. 2.e. below.

   e. The certifications required by Ordering Provision Nos. 2.c. and 2.d shall include detailed supporting documentation including photographs, receipts, and/or other

records to demonstrate compliance.

The certifications 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 certifications 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:

Cliff Moore, Water Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Harris. Mr. Harris is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If Mr. Harris 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, Mr. Harris's failure to comply is not a violation of this Agreed Order. Mr. Harris shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Harris shall notify the Executive Director within seven days

after Mr. Harris 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 Mr. Harris shall be made in writing to the Executive Director. Extensions are not effective until Mr. Harris 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 Mr. Harris 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Harris, or three days after the date on which the Commission mails notice of the Order to Mr. Harris, 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 8/22/08

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Jerry Dean Harris 6-24-08
Signature Date

JERRY DEAN HARRIS Owner
Name (Printed or typed) Title
Authorized representative of
Jerry Dean Harris