

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0957-AGR-E TCEQ ID: RN102586773 CASE NO.: 33809**  
**RESPONDENT NAME: WAYNE MOERMAN DBA XXX DAIRY**

<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> State Highway 16, approximately 2.5 miles south of the intersection of State Highway 16 and United States Highway 67/377, Comanche County</p> <p><b>TYPE OF OPERATION:</b> Dairy farm</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 enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 9, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Air Enforcement Section, MC 128, (512) 239-2576  TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901  Respondent: Mr. Wayne Moerman, XXX Dairy, P.O. Box 461, Comanche, Texas 76442  Respondent's Attorney: Mr. James D. Bradbury, 201 Main Street, Suite 600, Fort Worth, Texas 76102</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 28, 2007</p> <p><b>Date of NOE Relating to this Case:</b> May 18, 2007</p> <p><b>Background Facts:</b> The EDRP was filed January 2, 2008. The Respondent filed an answer and the case was referred to SOAH. The Respondent signed the Agreed Order on September 2, 2008.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>AGR:</b></p> <ol style="list-style-type: none"> <li>Failed to properly design, construct, operate, and maintain retention control structures ("RCSs") to contain and prevent discharges of manure, litter, or wastewater from a concentrated animal feeding operation ("CAFO") production area [30 TEX. ADMIN. CODE §§ 321.37(d) and 321.36(k), and CAFO General Permit No. TXG920040 Parts II.A, III.A.9 (a)(4), and V.D.].</li> <li>Failed to revise the pollution prevention plan ("PPP") before operation of new control facilities [30 TEX. ADMIN. CODE §§ 321.46(a)(4), 321.34(f)(3), and 321.38(e)(3), (e)(2), and (g)(3)(E), and CAFO General Permit No. TXG920040 Parts III.A.3 and III.A.6(a)(1), 6(a)(2), and 6(b)].</li> <li>Failed to include total manure, litter, and wastewater transferred to other persons in the Annual Report [30 TEX. ADMIN. CODE § 321.36 (j)(4) and CAFO General Permit No. TXG920040 Part IV.B.1 (d)].</li> </ol>	<p><b>Total Assessed:</b> \$1,600</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$1,600</p> <p>The Respondent paid the assessed penalty amount in full.</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input 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>Technical Requirements:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days:                     <ol style="list-style-type: none"> <li>Submit documentation to demonstrate that RCS No. 2 is designed, constructed, operated, and maintained to contain all wastewater from the CAFO production area including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the facility;</li> <li>Install a permanent pond marker in RCS No. 2;</li> <li>Submit a revised PPP that includes all certifications required; and</li> <li>Submit a revised Annual Report for the reporting period of January 1 to December 31, 2006, which reports the correct total amount of manure, litter, and wastewater transferred to other persons.</li> </ol> </li> <li>Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>



# Penalty Calculation Worksheet (PCW)

<b>DATES</b>	Assigned	4-Jun-2007	Screening	12-Jun-2007	EPA Due	
	PCW	29-Jul-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Wayne Moerman dba XXX Dairy		
Reg. Ent. Ref. No.	RN102586773		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	33809	No. of Violations	3
Docket No.	2007-0957-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Thomas Jecha
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,600
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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.

<b>Compliance History</b>	0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No NOV's or orders were issued to the facility within the past five years.

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

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

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

Total EB Amounts	\$60	0% Enhancement*	<b>Subtotal 6</b>	\$0
Approx. Cost of Compliance	\$1,400	*Capped at the Total EB \$ Amount		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,600
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

**Final Penalty Amount** \$1,600

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,600
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement

<b>PAYABLE PENALTY</b>	\$1,600
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Screening Date 12-Jun-2007

Docket No. 2007-0957-AGR-E

PCW

Respondent Wayne Moerman dba XXX Dairy

Policy Revision 2 (September 2002)

Case ID No. 33809

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102586773

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 NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No NOV's or Orders were issued to the facility within the past five years.

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

Screening Date 12-Jun-2007

Docket No. 2007-0957-AGR-E

PCW

Respondent Wayne Moerman dba XXX Dairy

Policy Revision 2 (September 2002)

Case ID No. 33809

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102586773

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 321.37(d) and 321.36(k) and CAFO General Permit No. TXG920040 Parts II.A, III.A.9(a)(4), and V.D.

Violation Description

Failed to properly design, construct, operate, and maintain retention control structures ("RCSs") to contain and prevent discharges of manure, litter, or wastewater from a concentrated animal feeding operation ("CAFO") production area, as documented during an investigation conducted on March 28, 2007. Specifically, a wastewater discharge from RCS No. 2, which had no pond marker, pooled behind the spillway dam. A grab sample of the discharged wastewater documented elevated levels of ammonia-nitrogen (2.14 milligrams per liter ("mg/L")), nitrate+nitrite (90.6 mg/L), orthophosphates (2.18 mg/L), and total Kjeldahl nitrogen (12.3 mg/l).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

76 Number of violation days

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 28, 2007 investigation until the June 12, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$46

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** Wayne Moerman dba XXX Dairy

**Case ID No.** 33809

**Reg. Ent. Reference No.** RN102586773

**Media** Water Quality

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment				0.0	\$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	\$1,100	28-Mar-2007	25-Jan-2008	0.8	\$46	n/a	\$46
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly maintain RCS No. 2 to prevent future discharges and install a pond marker. 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				0.0	\$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

\$1,100

**TOTAL**

\$46

Screening Date 12-Jun-2007

Docket No. 2007-0957-AGR-E

PCW

Respondent Wayne Moerman dba XXX Dairy

Policy Revision 2 (September 2002)

Case ID No. 33809

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102586773

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 321.46(a)(4), 321.34(f)(3), and 321.38(e)(3), (e)(2), and (g)(3)(E) and CAFO General Permit No. TXG920040 Parts III.A.3, and III.A.6(a)(1), 6(a)(2), and 6(b)

Violation Description Failed to revise the pollution prevention plan (PPP) before operation of new control facilities, as documented during an investigation conducted on March 28, 2007. Specifically, design, construction, and capacity certifications for RCS No. 2 and recharge feature certification for acreage recently added to the facility were not included in the PPP.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
		x		5%

Matrix Notes 30-70% of the rule requirement was not met.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 76 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

## Economic Benefit Worksheet

**Respondent:** Wayne Moerman dba XXX Dairy  
**Case ID No.** 33809  
**Reg. Ent. Reference No.** RN102586773  
**Media** Water Quality  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

### Delayed Costs

Equipment				0.0	\$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	\$200	28-Mar-2007	25-Jan-2008	0.8	\$8	n/a	\$8
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to include the required certifications in the revised PPP. The date required is investigation date and the final date is expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$8

Screening Date 12-Jun-2007

Docket No. 2007-0957-AGR-E

PCW

Respondent Wayne Moerman dba XXX Dairy

Policy Revision 2 (September 2002)

Case ID No. 33809

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN102586773

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 321.36(j)(4) and CAFO General Permit No. TXG920040 Part IV.B.1(d)

Violation Description

Failed to include total manure, litter, and wastewater transferred to other persons in the Annual Report, as documented during an investigation conducted on March 28, 2007. Specifically, the PPP indicated 8,691 tons of waste were transferred to other persons but only 5,271 tons were reported in the Annual Report for the same reporting period.

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 1%

Matrix Notes

More than 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

76 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$100

This violation Final Assessed Penalty (adjusted for limits) \$100

## Economic Benefit Worksheet

**Respondent:** Wayne Moerman dba XXX Dairy  
**Case ID No.:** 33809  
**Reg. Ent. Reference No.:** RN102586773  
**Media:** Water Quality  
**Violation No.:** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$100	28-Mar-2007	25-Jan-2008	0.8	\$0	\$6	\$6
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a corrected Annual Report. 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				0.0	\$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 \$100

TOTAL \$6

# Compliance History

Customer/Respondent/Owner-Operator: CN601313943 MOERMAN, WAYNE Classification: AVERAGE Rating: 0.50  
Regulated Entity: RN102586773 XXX DAIRY Classification: HIGH Site Rating: 0.00  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920040  
Location: on SH 16 approx 2.5mi S of intersect of SH 16 & US Highway 67/377, Comanche Co, TX, 76442 Rating Date: 9/1/2006 Repeat Violator: NO  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: June 05, 2007  
Agency Decision Requiring Compliance: Enforcement  
Compliance Period: June 05, 2002 to June 05, 2007

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	06/21/2002	(3297)
2	06/20/2003	(114304)
3	03/31/2004	(266530)
4	08/31/2004	(256667)
5	04/19/2005	(377727)
6	05/03/2006	(459238)
7	05/30/2007	(555317)

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

N/A

- 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  
WAYNE MOERMAN DBA XXX  
DAIRY;  
RN102586773

§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-0957-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 Wayne Moerman dba XXX Dairy ("Mr. Moerman") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Moerman, represented by James D. Bradbury, appear before the Commission and together stipulate that:

1. Mr. Moerman owns and operates a dairy farm on State Highway 16 approximately 2.5 miles south of the intersection of State Highway 16 and United States Highway 67/377 in Comanche County, Texas (the "Facility").
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. Moerman agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Moerman is subject to the Commission's jurisdiction.
4. Mr. Moerman received notice of the violations alleged in Section II ("Allegations") on or about May 23, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Moerman of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Six Hundred Dollars (\$1,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Moerman has paid One Thousand Six Hundred Dollars (\$1,600) 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. Moerman 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. Moerman 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, Mr. Moerman is alleged to have:

1. Failed to properly design, construct, operate, and maintain retention control structures ("RCSs") to contain and prevent discharges of manure, litter, or wastewater from a concentrated animal feeding operation ("CAFO") production area, in violation of 30 TEX. ADMIN. CODE §§ 321.37(d) and 321.36(k) and CAFO General Permit No. TXG920040 Parts II.A, III.A.9(a)(4), and V.D., as documented during an investigation conducted on March 28, 2007. Specifically, wastewater discharged from RCS No. 2, which was missing a pond marker, and pooled behind the spillway dam. A grab sample of the discharged wastewater documented elevated levels of ammonia-nitrogen (2.14 milligrams per liter ("mg/L")), nitrate+nitrite (90.6 mg/L), orthophosphates (2.18 mg/L), and total Kjeldahl nitrogen (12.3 mg/l).
2. Failed to revise the pollution prevention plan ("PPP") before operation of new control facilities, in violation of 30 TEX. ADMIN. CODE §§ 321.46(a)(4), 321.34(f)(3), and 321.38(e)(3), (e)(2), and (g)(3)(E) and CAFO General Permit No. TXG920040 Parts

III.A.3, and III.A.6(a)(1), 6(a)(2), and 6(b), as documented during an investigation conducted on March 28, 2007. Specifically, design, construction, and capacity certifications for RCS No. 2 and recharge feature certification for acreage recently added to the facility were not included in the PPP.

3. Failed to include total manure, litter, and wastewater transferred to other persons in the Annual Report, in violation of 30 TEX. ADMIN. CODE § 321.36(j)(4) and CAFO General Permit No. TXG920040 Part IV.B.1(d), as documented during an investigation conducted on March 28, 2007. Specifically, the PPP indicated 8,691 tons of waste were transferred to other persons but only 5,271 tons were reported in the Annual Report for the same reporting period of January 1 to December 31, 2006.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Moerman pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Moerman'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: Wayne Moerman dba XXX Dairy, Docket No. 2007-0957-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 Mr. Moerman shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this agreed order:
    - i. Submit documentation to demonstrate that RCS No. 2 is designed, constructed, operated, and maintained to contain all wastewater from the CAFO production area including the runoff and direct precipitation from the 25-year, 24-hour rainfall event for the location of the facility, in accordance with 30 TEX. ADMIN. CODE § 321.37(d) and CAFO General Permit No. TXG920040 Parts II.A and V.D.;

- ii. Install a permanent pond marker in RCS No. 2, in accordance with 30 TEX. ADMIN. CODE § 321.36(k) and CAFO General Permit No. TXG920040 Part III.A.9(a)(4);
  - iii. Submit a revised PPP that includes all certifications required by 30 TEX. ADMIN. CODE §§ 321.46(a)(4), 321.34(f)(3), and 321.38(e)(3), (e)(2), and (g)(3)(E) and CAFO General Permit No. TXG920040 Parts III.A.3, and III.A.6(a)(1), 6(a)(2), and 6(b);
  - iv. Submit a revised Annual Report for the reporting period of January 1 to December 31, 2006, which reports the correct total amount of manure, litter, and wastewater transferred to other persons, in accordance with 30 TEX. ADMIN. CODE § 321.36(j)(4) and CAFO General Permit No. TXG920040 Part IV.B.1(d);
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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:

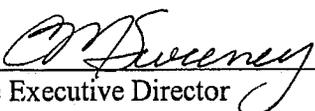
Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2301 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Moerman. Mr. Moerman 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 Mr. Moerman 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. Moerman's failure to comply is not a violation of this Agreed Order. Mr. Moerman shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Moerman shall notify the Executive Director within seven days after Mr. Moerman 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. Moerman shall be made in writing to the Executive Director. Extensions are not effective until Mr. Moerman 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. Moerman 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 Mr. Moerman, or three days after the date on which the Commission mails notice of the Order to Mr. Moerman, 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

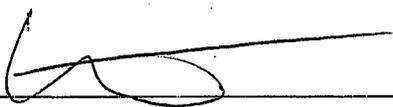
2/19/09  
\_\_\_\_\_  
Date

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

Wayne Moerman  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Wayne Moerman dba XXX Dairy

Owner  
\_\_\_\_\_  
Title

**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.