

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1626-AGR-E **TCEQ ID:** RN101609485 **CASE NO.:** 36654

RESPONDENT NAME: Gary Lane Nutt dba Nutt Feedyard

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: Nutt Feedyard, 3245 Farm-to-Market Road 1524, Castro County</p> <p>TYPE OF OPERATION: Concentrated animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</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 March 23, 2009. 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; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Gary Nutt, Owner, Nutt Feedyard, 3245 Farm-to-Market Road 1524, Dimmitt, Texas 79027 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: September 17, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 1, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to submit an annual report with all information required to the TCEQ by February 15 of each year for the period January 1 to December 31 of the previous year. Specifically, an annual report for 2007 has not been submitted [30 TEX. ADMIN. CODE § 321.46(e)(1) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920358, Part IV.B.1.].</p> <p>2) Failure to develop and implement a Nutrient Management Plan ("NMP") certified in accordance with the Natural Resources Conservation Service Practice Standard Code 590 [30 TEX. ADMIN. CODE § 321.36(d)(1) and TPDES CAFO General Permit No. TXG920358 Part III.A.11(a)].</p>	<p>Total Assessed: \$2,140</p> <p>Total Deferred: \$428 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,712</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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit an annual report for the period January 1 to December 31, 2007, which includes all information required by CAFO General Permit No. TXG920358, Part IV.B.1.; and</p> <p>b. Within 60 days after the effective date of this Agreed Order, develop and implement a NMP for the Facility.</p>

Additional ID No(s): CAFO General Permit No. TXG920358



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	6-Oct-2008	Screening	9-Oct-2008	EPA Due	
	PCW	10-Oct-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Gary Lane Nutt dba Nutt Feedyard		
Reg. Ent. Ref. No.	RN101609485		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36654	No. of Violations	2
Docket No.	2008-1626-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 3
Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes: Recommended enhancement for one NOV with same or similar violations and one NOV with dissimilar violations issued to the Facility within the past five years.

Culpability **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Screening Date 9-Oct-2008

Docket No. 2008-1626-AGR-E

PCW

Respondent Gary Lane Nutt dba Nutt Feedyard

Policy Revision 2 (September 2002)

Case ID No. 36654

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101609485

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%

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) 7%

>> **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

Recommended enhancement for one NOV with same or similar violations and one NOV with dissimilar violations issued to the Facility within the past five years.

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

Screening Date 9-Oct-2008	Docket No. 2008-1626-AGR-E	PCW		
Respondent Gary Lane Nutt dba Nutt Feedyard	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36654	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN101609485				
Media [Statute] Water Quality				
Enf. Coordinator Thomas Jecha				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 321.46(e)(1) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920358, Part IV.B.1.			
Violation Description	Failed to submit an annual report with all information required to the TCEQ by February 15 of each year for the period January 1 to December 31 of the previous year. Specifically, an annual report for 2007 has not been submitted.			
Base Penalty		\$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	0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	10%	
Matrix Notes	100% of the rule requirement was not met.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		1	237	
		Number of violation days		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
Violation Base Penalty		\$1,000		
One single event is recommended.				
Good Faith Efforts to Comply		0.0% Reduction	\$0	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>			
Ordinary	<input type="text"/>			
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		\$1,000		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$13	Violation Final Penalty Total	
		\$1,070		
		This violation Final Assessed Penalty (adjusted for limits)		
		\$1,070		

Economic Benefit Worksheet

Respondent Gary Lane Nutt dba Nutt Feedyard
Case ID No. 36654
Reg. Ent. Reference No. RN101609485
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)	\$200	15-Feb-2008	13-Jun-2009	1.33	\$13	n/a	\$13

Notes for DELAYED costs

Estimated cost to submit the 2007 annual report. The date required is the report deadline and the final date is the estimated 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	\$200	TOTAL	\$13
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Screening Date 9-Oct-2008	Docket No. 2008-1626-AGR-E	PCW
Respondent Gary Lane Nutt dba Nutt Feedyard	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36654	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN101609485		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number <input type="text" value="2"/>		
Rule Cite(s) 30 Tex. Admin. Code § 321.36(d)(1) and TPDES CAFO General Permit No. TXG920358 Part III.A.11(a)		
Violation Description	Failed to develop and implement a Nutrient Management Plan certified in accordance with the Natural Resources Conservation Service Practice Standard Code 590.	
Base Penalty		\$10,000
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release	Major Moderate Minor
	Actual	
	Potential	
		Percent <input type="text" value="0%"/>
>> Programmatic Matrix		
	Falsification	Major Moderate Minor
		x
		Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.	
Adjustment		\$9,000
		\$1,000
Violation Events		
Number of Violation Events	1	Number of violation days
	22	
<i>mark only one with an x</i>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	
		Violation Base Penalty
		\$1,000
One monthly event is recommended from the September 17, 2008 investigation until the October 9, 2008 screening date.		
Good Faith Efforts to Comply		
0.0% Reduction		\$0
	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal		\$1,000
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	\$203	Violation Final Penalty Total
		\$1,070
This violation Final Assessed Penalty (adjusted for limits)		\$1,070

Economic Benefit Worksheet

Respondent Gary Lane Nutt dba Nutt Feedyard
Case ID No. 36654
Reg. Ent. Reference No. RN101609485
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
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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)	\$2,000	1-Aug-2007	12-Aug-2009	2.03	\$203	n/a	\$203

Notes for DELAYED costs

Estimated cost to develop and implement a Nutrient Management Plan for land application of wastewater and manure. The date required is the date the plan was required to be certified and implemented and the final date is the estimated 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	\$2,000	TOTAL	\$203
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Rqmt Prov: PERMIT TXG920358 Part IV. A. 5(a)

Description: The facility failed to annually collect and have analyzed at least one representative sample of irrigation wastewater and one representative sample of manure for total nitrogen, total phosphorus, and total potassium.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.36(h)(1)

Rqmt Prov: PERMIT TXG920358 Part III. A. 15(a)(2)

Description: The facility failed to conduct and document daily inspections on all water lines which are located within the drainage area of the RCS.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(4)

30 TAC Chapter 321, SubChapter B 321.46(d)(7)

Rqmt Prov: PERMIT TXG920358 Part III. A. 15(a)(3)(i)&(ii)

Description: The facility failed to conduct and document the weekly inspections of all control facilities and wastewater levels in the RCS.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(c)(2)

Rqmt Prov: PERMIT TXG920358 Part III. A. 15(5)(i) & (ii)

Description: The facility failed to conduct a complete inspection of the CAFO, including the associated control facilities, LMU, and document the findings of the inspection at least once per year.

Date: 07/13/2007 (566584)

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(c)(1)

Rqmt Prov: PERMIT TXG 920358 Part III.A.9(b)(3)

Description: The facility failed to conduct and document a five year facility certification.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(e)(1)

Rqmt Prov: PERMIT TXG 920358 Part IV.B.1

Description: The facility failed to submit an annual report for 2006.

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
GARY LANE NUTT DBA NUTT
FEEDYARD
RN101609485

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1626-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 Gary Lane Nutt dba Nutt Feedyard ("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 concentrated animal feeding operation located at 3245 Farm-to-Market Road 1524 in Castro County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of 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 October 6, 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 Two Thousand One Hundred Forty Dollars (\$2,140) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Seven Hundred Twelve Dollars (\$1,712) of the administrative penalty and Four Hundred Twenty-Eight Dollars (\$428) 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 may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to submit an annual report with all information required to the TCEQ by February 15 of each year for the period January 1 to December 31 of the previous year, in violation of 30 TEX. ADMIN. CODE § 321.46(e)(1) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920358, Part IV.B.1., as documented during an investigation conducted on September 17, 2008. Specifically, an annual report for 2007 has not been submitted.
2. Failed to develop and implement a Nutrient Management Plan ("NMP") certified in accordance with the Natural Resources Conservation Service Practice Standard Code 590, in violation of 30 TEX. ADMIN. CODE § 321.36(d)(1) and TPDES CAFO General Permit No. TXG920358 Part III.A.11(a), as documented during an investigation conducted on September 17, 2008.

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: Gary Lane Nutt dba Nutt Feedyard, Docket No. 2008-1626-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. Within 30 days after the effective date of this Agreed Order, submit an annual report for the period January 1 to December 31, 2007, which includes all information required by CAFO General Permit No. TXG920358, Part IV.B.1. to the addresses shown in Ordering Provision No. 2.b. below;
 - b. Within 60 days after the effective date of this Agreed Order, develop and implement a NMP for the Facility and submit a copy of the NMP 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
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

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

2/27/2009
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

1/9/09
Date

Gary Nutt

Name (Printed or typed)
Authorized Representative of
Gary Lane Nutt dba Nutt Feedyard

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.

