

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2008-1955-MLM-E **TCEQ ID:** RN103991758 **CASE NO.:** 36955
RESPONDENT NAME: Brian Paul Boehning dba Boehning 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" 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: Boehning Dairy, located on County Road 45, 10.5 miles west of Earth and 0.5 mile south of State Highway 70, Lamb County</p> <p>TYPE OF OPERATION: Dairy</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 April 27, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Brian Paul Boehning, Owner, Boehning Dairy, 690 County Road 45, Earth, Texas 79031 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: October 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: December 3, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to properly dispose of carcasses. Specifically, numerous carcasses in various stages of decomposition were observed in and beside a large pit on the northeast side of the pens [30 TEX. ADMIN. CODE § 321.36(l) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920491 Part III.A.10(c)].</p> <p>2) Failure to provide adequate wellhead protection for irrigation wells. Specifically, the recharge feature certification dated May 17, 2008, stated that Well No. 3 had a concrete surface slab sealed to the surface and that either a buffer would be maintained around Well No. 14 or additional protective measures would be provided. However, during the investigation, the investigator observed no concrete surface slab on Well No. 3, and there was no buffer or additional protective measures at Well No. 14 [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920491 Part III.A.4(c)(1) and (5)].</p> <p>3) Failure to update Facility maps. Specifically, the Facility site map did not include the carcass burial sites, the new commodity barns and silage storage areas, or any of the berms located near the silage stockpiles [30 TEX. ADMIN. CODE §</p>	<p>Total Assessed: \$4,380</p> <p>Total Deferred: \$876 <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: \$3,504</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. By October 16, 2008, updated the Facility site map to include carcass burial sites, the new commodity barns and silage storage areas, and the berms located near the silage stockpiles;</p> <p>b. By October 19, 2008, completed burial of the carcasses in the pit on the northeast side of the pens;</p> <p>c. By October 25, 2008, constructed storm water diversion berms around the silage stockpile area;</p> <p>d. By November 20, 2008, poured a concrete surface slab around Well No. 3 and provided additional protective measures at Well No. 14, including a protective cover and a concrete surface slab; and</p> <p>e. By January 7, 2009, updated procedures to ensure that written notification is made at least 10 days prior to cleaning out a RCS and at least 90 days prior to disposing of industrial waste on site.</p>

321.46(a)(7)(A) and TPDES CAFO General Permit No. TXG920491 Part III.A.2(a)].

4) Failure to provide written notification to the appropriate TCEQ Regional Office at least 10 days prior to cleaning out a retention control structure ("RCS"). Specifically, a written cleanout notification was received by the Lubbock Regional Office on October 13, 2008, but the investigator observed on October 15, 2008, that cleanout of RCS No. 1 had already started [30 TEX. ADMIN. CODE § 321.39(c)(2) and TPDES CAFO General Permit No. TXG920491 Part IV.B.3].

5) Failure to retain and use wastewater in an appropriate and beneficial manner which resulted in a discharge. Specifically, a discharge of storm water was observed from the silage stockpile area on the west side of the Facility into a borrow ditch on the east side of County Road 45 [30 TEX. ADMIN. CODE § 321.37(d) and TPDES CAFO General Permit No. TXG920491 Part III.A.5.(a)(1)].

WASTE

6) Failure to notify the Executive Director that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Specifically, the Respondent disposed of approximately 1,500 cubic yards of Facility-generated industrial waste in a previously deed-recorded area, including construction and demolition debris, couches, mattresses, 55-gallon drums, oil filters, and animal carcasses, without providing notification to the TCEQ [30 TEX. ADMIN. CODE § 335.6(a)].

Additional ID No(s): TXG920491



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	8-Dec-2008	Screening	22-Dec-2008	EPA Due	
	PCW	29-Dec-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Brian Paul Boehning dba Boehning Dairy
Reg. Ent. Ref. No.	RN103991758
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36955	No. of Violations	6
Docket No.	2008-1955-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Industrial and Hazardous Waste	Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	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

Culpability *Subtotal 4*

Notes

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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 22-Dec-2008

Docket No. 2008-1955-MLM-E

PCW

Respondent Brian Paul Boehning dba Boehning Dairy

Policy Revision 2 (September 2002)

Case ID No. 36955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103991758

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

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)	1	5%
	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%
<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) 5%

>> 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 recommended due to one previous NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW	
Respondent Brian Paul Boehning dba Boehning Dairy	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36955	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN103991758			
Media [Statute] Water Quality			
Enf. Coordinator Evette Alvarado			
Violation Number 1			
Rule Cite(s)	30 Tex. Admin. Code § 321.36(l) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920491 Part III.A.10(c)		
Violation Description	Failed to properly dispose of carcasses. Specifically, on October 15, 2008, numerous carcasses in various stages of decomposition were observed in and beside a large pit on the northeast side of the pens.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Percent			10%
>> Programmatic Matrix			
Falsification			
Major	Moderate	Minor	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Percent			0%
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels as a result of this violation.		
Adjustment		\$9,000	
		\$1,000	
Violation Events			
Number of Violation Events	1	4	
	Number of violation days		
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
Violation Base Penalty		\$1,000	
One quarterly event is recommended from the date of the investigation on October 15, 2008, to the date the Respondent returned to compliance on October 19, 2008.			
Good Faith Efforts to Comply	25.0% Reduction	\$250	
	<small>Before NOV NOV to EDPRP/Settlement Offer</small>		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
N/A	<input type="checkbox"/>	<small>(mark with x)</small>	
Notes	The Respondent returned to compliance on October 19, 2008.		
Violation Subtotal		\$750	
Economic Benefit (EB) for this violation			
Statutory Limit Test			
Estimated EB Amount	\$3	Violation Final Penalty Total	
		\$800	
This violation Final Assessed Penalty (adjusted for limits)		\$800	

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
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				0.00	\$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	\$4,800	15-Oct-2008	19-Oct-2008	0.01	\$3	n/a	\$3
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to bury the carcasses. Date required is the date of the investigation. Final date is the date compliance was achieved.

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	\$4,800	TOTAL	\$3
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Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW	
Respondent Brian Paul Boehning dba Boehning Dairy	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36955	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN103991758			
Media [Statute] Water Quality			
Enf. Coordinator Evette Alvarado			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and TPDES CAFO General Permit No. TXG920491 Part III.A.4(c)(1) and (5)		
Violation Description	Failed to provide adequate wellhead protection for irrigation wells. Specifically, the recharge feature certification dated May 17, 2008, stated that Well No. 3 had a concrete surface slab sealed to the surface and that either a buffer would be maintained around Well No. 14 or additional protective measures would be provided. However, during the investigation on October 15, 2008, the investigator observed no concrete surface slab on Well No. 3, and there was no buffer zone or additional protective measures at Well No. 14.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
Harm			
Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Percent		<input type="text" value="5%"/>	
>> Programmatic Matrix			
Falsification			
Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Percent		<input type="text" value="0%"/>	
Matrix Notes	Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of this violation.		
Adjustment		<input type="text" value="\$9,500"/>	
		<input type="text" value="\$500"/>	
Violation Events			
Number of Violation Events		<input type="text" value="2"/>	Number of violation days
		<input type="text" value="68"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input checked="" type="checkbox"/>	
<input type="text" value="Two single events (one event per well) are recommended."/>			<input type="text" value="\$1,000"/>
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction
		<input type="text" value="Before NOV"/>	<input type="text" value="\$250"/>
		<input type="text" value="NOV to EDRP/Settlement Offer"/>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>	
N/A	<input type="text"/>	<input type="text" value="(mark with x)"/>	
Notes	The Respondent returned to compliance on November 20, 2008.		
Violation Subtotal		<input type="text" value="\$750"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		<input type="text" value="\$5"/>	Violation Final Penalty Total
		<input type="text" value="\$800"/>	
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$800"/>	

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
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	\$700	15-Oct-2008	20-Nov-2008	0.10	\$0	\$5	\$5
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 pour a concrete surface slab at Well No. 3 and provide additional protective measures (including a concrete surface slab and protective cover) for Well No. 14. Date required is the date of the investigation. Final date is the date compliance was achieved.

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 \$700

TOTAL \$5

Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW		
Respondent Brian Paul Boehning dba Boehning Dairy	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36955	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN103991758				
Media [Statute] Water Quality				
Enf. Coordinator Evette Alvarado				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	30 Tex. Admin. Code § 321.46(a)(7)(A) and TPDES CAFO General Permit No. TXG920491 Part III.A.2.(a)			
Violation Description	Failed to update Facility maps, as documented during the investigation on October 15, 2008. Specifically, the Facility site map did not include the carcass burial sites, the new commodity barns and silage storage areas, or any of the berms located near the silage stockpiles.			
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 type="text"/>	<input type="text"/>	x
				Percent <input type="text" value="1%"/>
Matrix Notes	At least 70% of the permit requirement was met.			
Adjustment				<input type="text" value="\$9,900"/>
				<input type="text" value="\$100"/>
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="68"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
				Violation Base Penalty <input type="text" value="\$100"/>
One single event is recommended.				
Good Faith Efforts to Comply		<input type="text" value="25.0%"/>	Reduction	<input type="text" value="\$25"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	The Respondent returned to compliance on October 16, 2008.			
Violation Subtotal				<input type="text" value="\$75"/>
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$0"/>	Violation Final Penalty Total	<input type="text" value="\$80"/>
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$80"/>

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**

Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0	\$0
Land			0.00	\$0	n/a	n/a	\$0
Record Keeping System			0.00	\$0	n/a	n/a	\$0
Training/Sampling			0.00	\$0	n/a	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	n/a	\$0
Permit Costs			0.00	\$0	n/a	n/a	\$0
Other (as needed)	\$400	15-Oct-2008	16-Oct-2008	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Delayed cost to prepare an updated Facility map. Date required is the date of the investigation. Final date is the date compliance was achieved.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$400

TOTAL \$0

Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW	
Respondent Brian Paul Boehning dba Boehning Dairy	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36955	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN103991758			
Media [Statute] Water Quality			
Enf. Coordinator Evette Alvarado			
Violation Number 4			
Rule Cite(s) 30 Tex. Admin. Code § 321.39(c)(2) and TPDES CAFO General Permit No. TXG920491 Part IV.B.3			
Violation Description	Failed to provide written notification to the appropriate TCEQ Regional Office at least ten days prior to cleaning out a retention control structure ("RCS"). Specifically, a written cleanout notification was received by the Lubbock Regional Office on October 13, 2008, but the investigator observed on October 15, 2008, that cleanout of RCS No. 1 had already started.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	Potential	Percent
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	0%
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="checkbox"/>	x	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Percent
	<input type="checkbox"/>	<input type="checkbox"/>	10%
Matrix Notes	100% of the requirement was not met.		
Adjustment		\$9,000	
		\$1,000	
Violation Events			
Number of Violation Events		1	Number of violation days
		1	
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	x	
One single event is recommended.			\$1,000
Good Faith Efforts to Comply		10.0% Reduction	\$100
		Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	x	
N/A	<input type="checkbox"/>	(mark with x)	
Notes	By January 7, 2009, the Respondent implemented procedures to ensure that notifications are made in a timely manner.		
Violation Subtotal		\$900	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount		\$0	Violation Final Penalty Total
			\$950
This violation Final Assessed Penalty (adjusted for limits)			\$950

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$25	5-Oct-2008	7-Jan-2009	0.26	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to update procedures to ensure that notifications of RCS cleanouts are submitted at least 10 days prior to the start of cleanout activities. Date required is the date the notification of cleanout was due. Final date is the date by which procedures were implemented.

Avoided Costs

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$25

TOTAL \$0

Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW	
Respondent Brian Paul Boehning dba Boehning Dairy		<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36955		<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN103991758			
Media [Statute] Water Quality			
Enf. Coordinator Evette Alvarado			
Violation Number	<input type="text" value="5"/>		
Rule Cite(s)	30 Tex. Admin. Code § 321.37(d) and TPDES CAFO General Permit No. TXG920491 Part III.A.5.(a)(1)		
Violation Description	Failed to retain and use wastewater in an appropriate and beneficial manner which resulted in a discharge. Specifically, on October 15, 2008, a discharge of storm water was observed from the silage stockpile area on the west side of the Facility into a borrow ditch on the east side of County Road 45.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Release	Major	Moderate
	Actual	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	Minor
		<input type="text"/>	<input checked="" type="checkbox"/>
		Percent	<input type="text" value="10%"/>
>> Programmatic Matrix			
	Falsification	Major	Moderate
	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<input type="text"/>	Minor
		Percent	<input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels as a result of this violation.		
Adjustment		<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
Violation Events			
Number of Violation Events		<input type="text" value="1"/>	Number of violation days
		<input type="text" value="10"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="\$1,000"/>			
One quarterly event is recommended from the investigation date of October 15, 2008, to the date compliance was achieved on October 25, 2008.			
Good Faith Efforts to Comply		25.0% Reduction	<input type="text" value="\$250"/>
		Before NOV NOV to EDRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>	
N/A	<input type="text"/>	(mark with x)	
Notes	The Respondent returned to compliance on October 25, 2008.		
Violation Subtotal		<input type="text" value="\$750"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$1"/>	Violation Final Penalty Total	<input type="text" value="\$800"/>
		This violation Final Assessed Penalty (adjusted for limits)	
		<input type="text" value="\$800"/>	

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$300	15-Oct-2008	25-Oct-2008	0.03	\$0	\$1	\$1
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 construct a berm around the commodity area (including the silage stockpiles) to prevent future discharges. Date required is the date of the investigation. Final date is the date compliance was achieved.

Avoided Costs

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$300

TOTAL \$1

Screening Date 22-Dec-2008	Docket No. 2008-1955-MLM-E	PCW		
Respondent Brian Paul Boehning dba Boehning Dairy		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36955		<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN103991758				
Media [Statute] Water Quality				
Enf. Coordinator Evette Alvarado				
Violation Number	<input type="text" value="6"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 335.6(a)"/>			
Violation Description	<input type="text" value="Failed to notify the Executive Director that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Specifically, the Respondent disposed of approximately 1,500 cubic yards of Facility-generated industrial waste in a previously deed-recorded area, including construction and demolition debris, couches, mattresses, 55-gallon drums, oil filters, and animal carcasses, without providing notification to the TCEQ."/>			
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="text" value="x"/>	<input type="text"/>	<input type="text"/>
Percent <input type="text" value="10%"/>				
Matrix Notes	<input type="text" value="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="1"/>		Number of violation days <input type="text" value="4"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="text" value="x"/>		
<input type="text" value="One single event is recommended."/>				
Good Faith Efforts to Comply		<input type="text" value="10.0%"/> Reduction	<input type="text" value="\$100"/>	
	Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input checked="" type="text" value="x"/>		
N/A	<input type="text" value="(mark with: x)"/>			
Notes	<input type="text" value="By January 7, 2009, the Respondent implemented procedures to ensure that notifications are made in a timely manner."/>			
Violation Subtotal		<input type="text" value="\$900"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$1"/>		Violation Final Penalty Total <input type="text" value="\$950"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$950"/>		

Economic Benefit Worksheet

Respondent Brian Paul Boehning dba Boehning Dairy
Case ID No. 36955
Reg. Ent. Reference No. RN103991758
Media Water Quality
Violation No. 6

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)	\$25	15-Jul-2008	7-Jan-2009	0.48	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to update procedures to ensure that notification is made at least 90 days prior to disposing of industrial waste on site. Date required is the date notification was required by rule. Final date is the date by which procedures were implemented.

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

\$25

TOTAL

\$1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BRIAN PAUL BOEHNING DBA
BOEHNING DAIRY
RN103991758

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1955-MLM-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 Brian Paul Boehning dba Boehning Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. 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 located on County Road 45, 10.5 miles west of Earth and 0.5 mile south of State Highway 70 in Lamb County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. 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.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 8, 2008.

6. 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.
7. An administrative penalty in the amount of Four Thousand Three Hundred Eighty Dollars (\$4,380) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Five Hundred Four Dollars (\$3,504) of the administrative penalty and Eight Hundred Seventy-Six Dollars (\$876) 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.
8. 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.
9. 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.
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By October 16, 2008, updated the Facility site map to include carcass burial sites, the new commodity barns and silage storage areas, and the berms located near the silage stockpiles;
 - b. By October 19, 2008, completed burial of the carcasses in the pit on the northeast side of the pens;
 - c. By October 25, 2008, constructed storm water diversion berms around the silage stockpile area;
 - d. By November 20, 2008, poured a concrete surface slab around Well No. 3 and provided additional protective measures at Well No. 14, including a protective cover and a concrete surface slab; and
 - e. By January 7, 2009, updated procedures to ensure that written notification is made at least 10 days prior to cleaning out a retention control structure ("RCS") and at least 90 days prior to disposing of industrial waste on site.
11. 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.
12. 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.

13. 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 properly dispose of carcasses, in violation of 30 TEX. ADMIN. CODE § 321.36(l) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG920491 Part III.A.10(c), as documented during an investigation conducted on October 15, 2008. Specifically, numerous carcasses in various stages of decomposition were observed in and beside a large pit on the northeast side of the pens.
2. Failed to provide adequate wellhead protection for irrigation wells, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920491 Part III.A.4(c)(1) and (5), as documented during an investigation conducted on October 15, 2008. Specifically, the recharge feature certification dated May 17, 2008, stated that Well No. 3 had a concrete surface slab sealed to the surface and that either a buffer would be maintained around Well No. 14 or additional protective measures would be provided. However, during the investigation, the investigator observed no concrete surface slab on Well No. 3, and there was no buffer or additional protective measures at Well No. 14.
3. Failed to update Facility maps, in violation of 30 TEX. ADMIN. CODE § 321.46(a)(7)(A) and TPDES CAFO General Permit No. TXG920491 Part III.A.2(a), as documented during an investigation conducted on October 15, 2008. Specifically, the Facility site map did not include the carcass burial sites, the new commodity barns and silage storage areas, or any of the berms located near the silage stockpiles.
4. Failed to provide written notification to the appropriate TCEQ Regional Office at least 10 days prior to cleaning out a RCS, in violation of 30 TEX. ADMIN. CODE § 321.39(c)(2) and TPDES CAFO General Permit No. TXG920491 Part IV.B.3, as documented during an investigation conducted on October 15, 2008. Specifically, a written cleanout notification was received by the Lubbock Regional Office on October 13, 2008, but the investigator observed on October 15, 2008, that cleanout of RCS No. 1 had already started.
5. Failed to retain and use wastewater in an appropriate and beneficial manner which resulted in a discharge, in violation of 30 TEX. ADMIN. CODE § 321.37(d) and TPDES CAFO General Permit No. TXG920491 Part III.A.5.(a)(1), as documented during an investigation conducted on October 15, 2008. Specifically, a discharge of storm water was observed from the silage stockpile area on the west side of the Facility into a borrow ditch on the east side of County Road 45.
6. Failed to notify the Executive Director that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities, in violation of 30 TEX. ADMIN. CODE § 335.6(a), as documented during an investigation conducted on October 15, 2008. Specifically, the Respondent disposed of approximately 1,500 cubic yards of Facility-generated industrial waste in a previously deed-recorded area, including construction and demolition debris, couches,

mattresses, 55-gallon drums, oil filters, and animal carcasses, without providing notification to the TCEQ.

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 7 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: Brian Paul Boehning dba Boehning Dairy, Docket No. 2008-1955-MLM-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. 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.
3. 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.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. 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

John Sredlin
For the Executive Director

4/13/2009
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.

Brian Paul Boehning
Signature

2/24/09
Date

Brian Paul Boehning
Name (Printed or typed)
Authorized Representative of
Brian Paul Boehning dba Boehning 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.

