

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1836-IWD-E    **TCEQ ID:** RN100212943    **CASE NO.:** 36854

**RESPONDENT NAME:** Tyson Fresh Meats, Inc.

<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> Tyson Fresh Meats, located on the northeast side of the intersection of U.S. Highway 60 East and Farm-to-Market Road 1912 with an associated irrigation site located two miles north of the intersection of Farm-to-Market Road 1912 and U.S. Highway 60 East, and six miles northeast of the Amarillo Municipal Airport, Potter County</p> <p><b>TYPE OF OPERATION:</b> Beef packing plant with an associated wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 13, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Kurt Suther, Complex Manager, Tyson Fresh Meats, Inc., P.O. Box 30500, Amarillo, Texas 79187  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 14, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 3, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to apply treated wastewater to the irrigation field at or below the permitted application rate. Specifically, the total kjeldahl nitrogen ("TKN") permitted application rate is 300 pounds ("lbs")/acre/year and the reported TKN application rate for the reporting period of September 1, 2007 through August 31, 2008 was 332.7 lbs/acre/year [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001873000, Conditions of the Permit, Application Rates].</p> <p>2) Failure to meet the permitted effluent limits for pH [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0001873000, Conditions of the Permit, Quality].</p>	<p><b>Total Assessed:</b> \$3,040</p> <p><b>Total Deferred:</b> \$608  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,432</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" 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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on November 26, 2008, the Respondent implemented procedures that include ceasing to irrigate each pivot site by removing the pivot pump fuses and locking the electrical boxes when the TKN application rate is near or reaches 290 lbs/acre/year.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, develop and implement procedures to ensure that the permitted effluent limits are being met; and</p> <p>b. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a and the permitted effluent limits.</p>

Additional ID No(s): WQ0001873000



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	10-Nov-2008	Screening	1-Dec-2008	EPA Due	
	PCW	3-Dec-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Tyson Fresh Meats, Inc.
Reg. Ent. Ref. No.	RN100212943
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36854	No. of Violations	2
Docket No.	2008-1836-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
Admin. Penalty \$	Limit Minimum \$0	EC's Team	Enforcement Team 3
	Maximum \$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,000
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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>	57.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,140
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Notes: Enhancement recommended for having one NOV for the same or similar violations, six NOVs for non-similar violations, and two Agreed Orders with denial within the last five years.

<b>Culpability</b>	No	0.0% 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 Total Adjustments</b>	<b>Subtotal 5</b>	\$100
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$249  
 Approx. Cost of Compliance \$6,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,040
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$3,040
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,040
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$608
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$2,432
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Screening Date 1-Dec-2008

Docket No. 2008-1836-IWD-E

PCW

Respondent Tyson Fresh Meats, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36854

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100212943

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

## Compliance History Worksheet

## &gt;&gt; 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	6	12%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 57%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Enhancement recommended for having one NOV for the same or similar violations, six NOVs for non-similar violations, and two Agreed Orders with denial within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 57%

<b>Screening Date</b> 1-Dec-2008	<b>Docket No.</b> 2008-1836-IWD-E	<b>PCW</b>																
<b>Respondent</b> Tyson Fresh Meats, Inc.		<small>Policy Revision 2 (September 2002)</small>																
<b>Case ID No.</b> 36854		<small>PCW Revision October 30, 2008</small>																
<b>Reg. Ent. Reference No.</b> RN100212943																		
<b>Media [Statute]</b> Water Quality																		
<b>Enf. Coordinator</b> Samuel Short																		
<b>Violation Number</b> <input type="text" value="1"/>																		
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001873000, Conditions of the Permit, Application Rates																	
<b>Violation Description</b>	Failed to apply treated wastewater to the irrigation field at or below the permitted application rate. Specifically, the total kjeldahl nitrogen ("TKN") permitted application rate is 300 pounds ("lbs")/acre/year and the reported TKN application rate for the reporting period of September 1, 2007 through August 31, 2008 was 332.7 lbs/acre/year.																	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																		
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> </tr> <tr> <td>Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm			Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	x	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Harm																	
Release	Major	Moderate	Minor															
Actual	<input type="text"/>	<input type="text"/>	x															
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>															
<b>&gt;&gt; Programmatic Matrix</b>																		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> </tr> <tr> <td>Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Major	Moderate	Minor	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>								
	Major	Moderate	Minor															
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>															
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.																	
	<b>Adjustment</b>	<input type="text" value="\$9,000"/>																
		<input type="text" value="\$1,000"/>																
<b>Violation Events</b>																		
	<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="365"/> <b>Number of violation days</b>																
<small>mark only one with an x</small>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td style="text-align: center;">x</td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	x	single event	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>		
daily	<input type="text"/>																	
weekly	<input type="text"/>																	
monthly	<input type="text"/>																	
quarterly	<input type="text"/>																	
semiannual	<input type="text"/>																	
annual	x																	
single event	<input type="text"/>																	
	One annual event is recommended.																	
<b>Good Faith Efforts to Comply</b>																		
	<b>10.0% Reduction</b>	<input type="text" value="\$100"/>																
	<small>Before NOV    NOV to EDPRP/Settlement Offer</small>																	
Extraordinary	<input type="text"/>	<input type="text"/>																
Ordinary	<input type="text"/>	x																
N/A	<small>(mark with x)</small>																	
<b>Notes</b>	The Respondent returned to compliance on November 26, 2008.																	
	<b>Violation Subtotal</b>	<input type="text" value="\$900"/>																
<b>Economic Benefit (EB) for this violation</b>																		
	<b>Statutory Limit Test</b>																	
<b>Estimated EB Amount</b> <input type="text" value="\$12"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,470"/>																
	<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,470"/>																	

## Economic Benefit Worksheet

**Respondent** Tyson Fresh Meats, Inc.  
**Case ID No.** 36854  
**Reg. Ent. Reference No.** RN100212943  
**Media** Water Quality  
**Violation No.** 1

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

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

Item Description	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)	\$1,000	31-Aug-2008	26-Nov-2008	0.24	\$12	n/a	\$12

Notes for DELAYED costs: The estimated cost to develop and implement procedures to ensure that the TKN application rate would not exceed 300lbs/acre/year. Date required is date of non-compliance. The final date is the date that the Respondent achieved compliance.

**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

<b>Approx. Cost of Compliance</b>	\$1,000	<b>TOTAL</b>	\$12
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<b>Screening Date</b> 1-Dec-2008 <b>Respondent</b> Tyson Fresh Meats, Inc. <b>Case ID No.</b> 36854 <b>Reg. Ent. Reference No.</b> RN100212943 <b>Media [Statute]</b> Water Quality <b>Enf. Coordinator</b> Samuel Short <b>Violation Number</b> 2 <b>Rule Cite(s)</b> Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0001873000, Conditions of the Permit, Quality  <b>Violation Description</b> Failed to meet the permitted effluent limits, as shown in the attached table.	<b>Docket No.</b> 2008-1836-IWD-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2008</i>																
<b>Base Penalty</b> \$10,000																	
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Release	Harm																
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Falsification	Major	Moderate	Minor														
				<b>Percent</b> 0%													
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.																
<b>Adjustment</b> \$9,000																	
\$1,000																	
<b>Violation Events</b>																	
Number of Violation Events	1	76	Number of violation days														
mark only one with an x	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td></td></tr> <tr><td>quarterly</td><td style="text-align: center;">x</td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		weekly		monthly		quarterly	x	semiannual		annual		single event		<b>Violation Base Penalty</b> \$1,000	
daily																	
weekly																	
monthly																	
quarterly	x																
semiannual																	
annual																	
single event																	
One quarterly event is recommended from the date of the first exceedance, September 17, 2008, to the last date of exceedance, October 9, 2008.																	
<b>Good Faith Efforts to Comply</b>																	
	0.0% Reduction	\$0															
	Before NOV    NOV to EDPRP/Settlement Offer																
Extraordinary																	
Ordinary																	
N/A	x	(mark with x)															
Notes	The Respondent does not meet the good faith criteria for this violation.																
<b>Violation Subtotal</b>		\$1,000															
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>															
Estimated EB Amount	\$237	Violation Final Penalty Total \$1,570															
This violation Final Assessed Penalty (adjusted for limits)		\$1,570															

## Economic Benefit Worksheet

**Respondent** Tyson Fresh Meats, Inc.  
**Case ID No.** 36854  
**Reg. Ent. Reference No.** RN100212943  
**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
<b>Delayed Costs</b>							
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)	\$5,000	17-Sep-2008	29-Aug-2009	0.95	\$237	n/a	\$237

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement procedures to ensure that permitted effluent limits are met. Date required is the first date of non-compliance. The final date is the expected date of compliance.

<b>Avoided Costs</b>							
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 \$5,000

TOTAL \$237

**Effluent Limit Violation Table**

<b>Respondent</b>	Tyson Fresh Meats, Inc.
<b>ID Number(s)</b>	WQ0001873000
<b>Docket Number</b>	2008-1836-IWD-E
<b>Enf. Coordinator</b>	Samuel Short

**Corresponds to Violation Number:** 2

**EFFLUENT PARAMETER**  
*Permit Limit*

<i>Month/Day/Year</i>	pH daily max.				
	9.0 su				
9/17/2008	9.05				
9/24/2008	9.13				
9/25/2008	9.71				
10/1/2008	9.52				
10/2/2008	9.06				
10/8/2008	9.19				
10/9/2008	9.19				

<u>Name</u>	<u>Abbreviation</u>
standard unit	su
maximum	max.



# Compliance History Report

Customer/Respondent/Owner-Operator: CN601737729 Tyson Fresh Meats, Inc. Classification: AVERAGE Rating: 4.03  
 Regulated Entity: RN100212943 TYSON FRESH MEATS Classification: AVERAGE Site Rating: 11.14

ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	PG0024R
	AIR OPERATING PERMITS	PERMIT	1296
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	40514
	WASTEWATER	PERMIT	WQ0001873000
	AIR NEW SOURCE PERMITS	PERMIT	1072
	AIR NEW SOURCE PERMITS	PERMIT	1073
	AIR NEW SOURCE PERMITS	PERMIT	1074
	AIR NEW SOURCE PERMITS	PERMIT	1075
	AIR NEW SOURCE PERMITS	PERMIT	6721
	AIR NEW SOURCE PERMITS	PERMIT	21000
	AIR NEW SOURCE PERMITS	PERMIT	43755
	AIR NEW SOURCE PERMITS	PERMIT	44100
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	PG0024R
	AIR NEW SOURCE PERMITS	AFS NUM	4837500027
	UNDERGROUND INJECTION CONTROL	PERMIT	WDW120
	UNDERGROUND INJECTION CONTROL	PERMIT	WDW312
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD065022121
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	31455
	LEAKING PETROLEUM STORAGE TANKS REMEDIATION	ID NUMBER	91557
	WASTEWATER LICENSING	LICENSE	WQ0001873000

Location: LOCATED ON THE NORTHEAST SIDE OF THE INTERSECTION OF U.S. HIGHWAY 60 EAST AND FARM-TO-MARKET ROAD 1912 WITH AN ASSOCIATED IRRIGATION SITE LOCATED TWO MILES NORTH OF THE INTERSECTION OF FARM-TO-MARKET ROAD 1912 AND U.S. HIGHWAY 60 EAST, AND SIX MILES NORTHEAST OF THE AMARILLO MUNICIPAL AIRPORT POTTER COUNTY, TX

TCEQ Region: REGION 01 - AMARILLO  
 Date Compliance History Prepared: December 04, 2008  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: December 04, 2003 to December 04, 2008

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

Name: Samuel Short Phone: (512) 239-5363

### 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)?
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 12/21/2003 ADMINORDER 1999-0005-AIR-E  
 Classification: Moderate  
 Citation: 30 TAC Chapter 122, SubChapter B 122.130(b)(2)  
 5C THC Chapter 382, SubChapter A 382.054  
 5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to submit a full Title V application by the required due date of July 25, 1998 by continuing to

operate.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PP6 OP

Description: Received blood from a source other than Tyson facilities on April 5, 1999.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PP5(C) OP

Description: Failed to maintain a minimum chlorine residual of 125 ppm in the scrubber system between January 1, 1998 and October 1, 1999.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PP3(F) OP

Description: Failed to maintain a minimum differential pressure drop between 3 and 4 inches of water.

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: PP5(D) OP

Description: Failed to properly annotate unscheduled cleaning and maintenance of all air pollution control equipment.

Classification: Moderate

Citation: 30 TAC Chapter 112, SubChapter B 112.32  
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Exceed H2S limit.

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)  
40 CFR Chapter 60, SubChapter C, PT 60, SubPT A 60.7

40 CFR Chapter 60, SubChapter C, PT 60, SubPT Dc 60.48c(g)  
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to record and maintain 2 years worth of daily records of the fuel combusted on Boiler No. 6

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition 3(D) PERMIT

Description: Exceeding the maximum temperature limit of 130°F in the scrubber system at the Rendering Plant.  
Exceeding the maximum temperature limit of 130°F in the scrubber system at the Rendering Plant.

Classification: Minor

Citation: 30 TAC Chapter 101, SubChapter A 101.4  
5C THC Chapter 382, SubChapter A 382.085(a)

5C THC Chapter 382, SubChapter A 382.085(b)

Description: Emitted air contaminants into the atmosphere in such concentrations and duration as to create an odor nuisance.

Effective Date: 03/21/2005

ADMINORDER 2004-0905-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)  
5C THC Chapter 382, SubChapter A 382.085(b)

Rqmt Prov: Special Condition No. 1 PERMIT

Description: Failed to maintain an emission rate below the maximum allowable emission limits of 46.86 pounds per hour (lbs/hr) of Sulfur Dioxide (SO<sub>2</sub>), 0.50 lbs/hr of Hydrogen Sulfide (H<sub>2</sub>S), 34.19 lbs/hr of Carbon Monoxide (CO), 2.75 lbs/hr of Volatile Organic Compounds (VOCs), and 3.99 lbs/hr of Oxides of Nitrogen (NO<sub>x</sub>) for the Bi

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	01/27/2004	(259097)
2	03/04/2004	(263286)
3	06/03/2004	(271593)
4	08/09/2004	(287228)
5	08/11/2004	(289023)
6	09/24/2004	(333694)
7	10/11/2004	(336634)
8	12/22/2004	(344759)
9	02/09/2005	(349647)
10	03/03/2005	(372917)
11	04/22/2005	(375121)
12	04/27/2005	(378903)
13	07/28/2005	(401770)
14	08/04/2005	(403349)
15	09/23/2005	(432152)
16	10/24/2005	(435366)
17	02/15/2006	(455383)
18	02/15/2006	(455666)
19	08/07/2006	(490285)
20	08/29/2006	(510504)
21	11/02/2006	(518054)
22	11/02/2006	(518212)
23	01/03/2007	(534539)
24	01/29/2007	(537900)
25	03/23/2007	(554257)
26	04/30/2007	(555879)
27	08/03/2007	(570882)
28	08/17/2007	(572705)
29	10/02/2007	(594894)
30	12/07/2007	(610998)
31	01/14/2008	(613945)
32	02/14/2008	(618075)
33	08/15/2008	(689507)
34	08/25/2008	(700328)
35	08/25/2008	(701033)
36	10/24/2008	(705485)
37	11/03/2008	(704417)

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

Date: 01/26/2004 (259097)

CN601737729

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.4  
WQ 0001873 PERMIT

Description: Failure to monitor effluent for Total Dissolved Solids for the period of October 24, 2001, through June 2, 2003, as permit required.

Date: 07/19/2004 (280578)

CN601737729

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter A 335.4(1)  
WQ 0001873000 PERMIT

Description: Failure to prevent the creation of nuisance conditions and the possible discharge of industrial solid waste or process wastewater from a permitted

application site, into or adjacent to the waters in the state.

Date: 04/22/2005 (375121) CN601737729  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
V. Special Provisions, S, pg. 6 PERMIT  
Description: Failure to maintain, comply with, and implement the TCEQ approved groundwater monitoring plan.

Date: 02/15/2006 (455383) CN601737729  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)  
Description: Failed to report an emission event on their semi-annual deviation report in accordance with 30 TAC §122.145(2)(A).

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(E)(iv)  
Description: failed to document recordkeeping requirements per their permit number 1972. This is a violation of 30 TAC §116.115(b)(2)(E)(iv).

Date: 04/25/2007 (555879) CN601737729  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
IV. Conditions of the Permit PERMIT  
Description: annual nitrogen (as TKN) application rate.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
VI Standard Permit Conditions PERMIT  
Description: Failure by the facility to calibrate the irrigation flow meters on an annual basis.

Date: 10/02/2007 (594894)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)  
Description: Failed to comply with the requirements of §101.201 for incident 93767. The report was submitted outside the 24-hour notification period per 30 TAC §101.201(A)(1)(b).

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 101, SubChapter F 101.201(a)(1)(B)  
Description: The company failed to comply with the requirements of §101.201 for incident 93172. The report was submitted outside the 24-hour notification period per 30 TAC §101.201(A)(1)(b).

Date: 01/14/2008 (613945) CN601737729  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 331, SubChapter D 331.65(b)(4)  
Description: The facility failed to submit reports to the Executive Director containing both test data and interpretation of the results of the MITs and Pressure Falloff Testing within 30 days of conducting the MIT.

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  
TYSON FRESH MEATS, INC.  
RN100212943

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1836-IWD-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 Tyson Fresh Meats, Inc. ("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 beef packing plant with an associated wastewater treatment facility located on the northeast side of the intersection of U.S. Highway 60 East and Farm-to-Market Road 1912 with an associated irrigation site located two miles north of the intersection of Farm-to-Market Road 1912 and U.S. Highway 60 East, and six miles northeast of the Amarillo Municipal Airport in Potter 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 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 November 8, 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 Three Thousand Forty Dollars (\$3,040) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Four Hundred Thirty-Two Dollars (\$2,432) of the administrative penalty and Six Hundred Eight Dollars (\$608) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on November 26, 2008, the Respondent implemented procedures that include ceasing to irrigate each pivot site by removing the pivot pump fuses and locking the electrical boxes when the total kjeldahl nitrogen ("TKN") application rate is near or reaches 290 pounds("lbs")/acre/year.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to apply treated wastewater to the irrigation field at or below the permitted application rate, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001873000, Conditions of the Permit, Application Rates, as documented during an investigation conducted on October 14, 2008. Specifically, the TKN permitted application rate is 300 lbs/acre/year and the reported TKN application rate for the reporting period of September 1, 2007 through August 31, 2008 was 332.7 lbs/acre/year.
2. Failed to meet the permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0001873000, Conditions of the Permit, Quality, as documented during an investigation conducted on October 14, 2008, and as indicated in the table below:

	<u>EFFLUENT PARAMETER</u> Permit Limit
	pH daily max.
<i>Month/Day/Year</i>	9.0 su
9/17/2008	9.05
9/24/2008	9.13
9/25/2008	9.71
10/1/2008	9.52
10/2/2008	9.06
10/8/2008	9.19
10/9/2008	9.19

Name	Abbreviation
standard unit	su
maximum	max.

### 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: Tyson Fresh Meats, Inc., Docket No. 2008-1836-IWD-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, develop and implement procedures to ensure that the permitted effluent limits are being met, in accordance with TPDES Permit No. WQ0001873000; and

- b. Within 60 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 and the permitted effluent limits. 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:

Manager, Water Section  
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

John Sredin  
\_\_\_\_\_  
For the Executive Director

3/24/2009  
\_\_\_\_\_  
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]  
\_\_\_\_\_  
Signature

1/9/09  
\_\_\_\_\_  
Date

Kurt Suther  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Tyson Fresh Meats, Inc.

Complex Mgr.  
\_\_\_\_\_  
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.