

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1097-AGR-E **TCEQ ID:** RN102844768 **CASE NO.:** 36166

RESPONDENT NAME: Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L 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 type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: D & L Dairy, located on the west side of State Highway 108, approximately 1.25 miles south of the intersection of State Highway 108 and Farm-to-Market Road 219, Erath County</p> <p>TYPE OF OPERATION: Dairy farm</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 Respondents have expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 1, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Messrs. Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten, Owners, D & L Dairy, 17493 North State Highway 108, Stephenville, Texas 76401 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2008-1097-AGR-E

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: May 5, 2008</p> <p>Date of NOV/NOE Relating to this Case: June 27, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to develop and implement a Retention Control Structure ("RCS") management plan following permit issuance. Specifically, a RCS management plan was not developed following the March 5, 2008 issuance of a new permit [30 TEX. ADMIN. CODE § 321.42(g) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. WQ0004133000, Part X, Special Provisions A.3].</p> <p>2) Failure to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the designed rainfall event resulting in discharges from the concrete settling basin and from RCS No. 1. Specifically, evidence of a discharge was observed at the concrete settling basin and a discharge was observed from RCS No. 1 over the dam of the pond levee and into water in the state [30 TEX. ADMIN. CODE § 321.36(c), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. WQ0004133000, Part VII, Section A.5.(a)(1)].</p>	<p>Total Assessed: \$5,215</p> <p>Total Deferred: \$1,043 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total (Due) Paid to General Revenue: \$1,043 (remaining \$3,129 due in three payments of \$1,043 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN602951238, CN601116429, CN602951220</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 Respondents have implemented the following corrective measures at the Facility:</p> <p>a. On May 5, 2008, stopped the discharge by pumping wastewater from RCS No. 1 onto a field designated by the TCEQ investigator; and</p> <p>b. On September 8, 2008, submitted an RCS Management Plan.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondents to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin implementation of the RCS Management Plan;</p> <p>b. Immediately upon the effective date of this Agreed Order, begin properly operating and maintaining the settlement basin and all RCSs, including spillways, to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, ten-day design rainfall event; and</p> <p>c. Within 30 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 Provisions a and b.</p>

Additional ID No(s): WQ0004133000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	22-Jun-2008	Screening	8-Jul-2008	EPA Due	
	PCW	8-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy
Reg. Ent. Ref. No.	RN102844768
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36166	No. of Violations	2
Docket No.	2008-1097-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		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)	<i>Subtotal 1</i>	\$3,500
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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.

Compliance History	49.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$1,715
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Notes: An enhancement is recommended due to one Agreed Order without denial language, one Agreed Order with denial language, and two unrelated NOV's.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts \$460
Approx. Cost of Compliance \$7,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$5,215
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<i>Final Penalty Amount</i>	\$5,215
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$5,215
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,043
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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.

PAYABLE PENALTY	\$4,172
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Screening Date 8-Jul-2008

Docket No. 2008-1097-AGR-E

PCW

Respondent Dennis James Schouten, Cornelius Thomas Schouten, and

Policy Revision 2 (September 2002)

Case ID No. 36166

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102844768

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 49%

>> **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

An enhancement is recommended due to one Agreed Order without denial language, one Agreed Order with denial language, and two unrelated NOVs.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 49%

PCW

Screening Date 8-Jul-2008

Docket No. 2008-1097-AGR-E

Respondent Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy

Policy Revision 2 (September 2002)

Case ID No. 36166

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102844768

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.42(g) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. WQ0004133000, Part X, Special Provisions A.3

Violation Description Failed to develop and implement a Retention Control Structure ("RCS") management plan following permit issuance, as documented during an investigation conducted on May 5, 2008. Specifically, a RCS management plan was not developed following the March 5, 2008 issuance of a new permit.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 125

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single, discrete event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$345

Violation Final Penalty Total \$1,490

This violation Final Assessed Penalty (adjusted for limits) \$1,490

Economic Benefit Worksheet

Respondent: Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy

Case ID No.: 36166

Reg. Ent. Reference No.: RN102844768

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

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)	\$5,000	5-Mar-2008	28-Feb-2009	0.99	\$16	\$329	\$345
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to develop and implement a management plan for RCS No. 1. The date required is the issuance date of permit when the plan was to be developed and implemented. The final date is the expected date of compliance.

Avoided Costs

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

Item Description	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	\$5,000	TOTAL	\$345
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Screening Date 8-Jul-2008

Docket No. 2008-1097-AGR-E

PCW

Respondent Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy

Policy Revision 2 (September 2002)

Case ID No. 36166

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102844768

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 321.36(c), Tex. Water Code § 26.121(a), and TPDES General Permit No. WQ0004133000, Part VII, Section A.5.(a)(1)

Violation Description

Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event resulting in discharges from the concrete settling basin and from RCS No. 1, as documented during an investigation conducted on May 5, 2008. Specifically, discharge debris was observed on top of and on the outside wall of the concrete settling basin and a discharge was observed from RCS No. 1 over the dam of the pond levee and into water in the state. The Respondent had failed to operate and maintain the settling basin and RCS No. 1 as required to prevent an unauthorized discharge.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended from date the discharge began (May 5, 2008) to the date the discharge ceased (May 5, 2008).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$3,725

This violation Final Assessed Penalty (adjusted for limits) \$3,725

Economic Benefit Worksheet

Respondent: Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy

Case ID No.: 36166

Reg. Ent. Reference No.: RN102844768

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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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	5-May-2008	28-Feb-2009	0.82	\$5	\$109	\$115
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 costs to prevent unauthorized discharges. The date required is the date of investigation. The final date is the date compliance is expected to be achieved in terms of operating and maintaining the control facilities to prevent additional discharges.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$115

Compliance History

Customer/Respondent/Owner-Operator: CN602951238 SCHOUTEN, NICHOLAS Classification: AVERAGE Rating: 28.71
Regulated Entity: RN102844768 D & L DAIRY Classification: AVERAGE Site Rating: 28.71
ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0004133000
WASTEWATER AGRICULTURE EPA ID TX0128422
Location: LOCATED ON THE WEST SIDE OF ST. HWY. 108, Rating Date: September 01 07 Repeat Violator:
APPROX. 1.25 MILES SOUTH OF THE INTERSECTION NO
OF ST. HWY. 108 AND FM 219 IN ERATH CO., TX.
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 07, 2003 to July 07, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee Hupp Phone: 512-239-4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

Effective Date: 01/30/2004 ADMINORDER 2001-1005-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)

Rqmt Prov: VI B 1 b PERMIT
VII(2) PERMIT

Description: Failed to stop waste and wastewater application to a field after soil analysis results indicated phosphorus levels in excess 200ppm.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: IV PERMIT
VII(2) & (4).PERMIT

Description: Failed to include all retention control structures in the permit application.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(24)(A)

Rqmt Prov: VI (F)(2) and VII(2) PERMIT

Description: Failed to provide adequate containment structures for all manure storage piles.

Classification: Minor

Citation: 30 TAC Chapter 220, SubChapter B 220.21
30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Sections VII(5) and (2) PERMIT

Description: Failed to pay the Wastewater Treatment Inspection Fee & Water Quality Assessment Fee in a timely manner.

Effective Date: 02/25/2008

ADMINORDER 2007-0624-AGR-E

Classification: Major

Citation: 30 TAC Chapter 321, SubChapter B 321.42(s)

Description: Failure to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/25/2004	(290674)
2	04/07/2005	(374968)
3	01/18/2006	(451439)
4	11/27/2006	(519359)
5	03/29/2007	(543782)
6	11/09/2007	(596882)
7	06/20/2008	(683198)

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

Date 04/04/2005 (374968)

Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)

Description: Failure to submit soil sample results within the required 60 days to the TCEQ

Date 10/04/2007 (596882)

Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.40(7)

Description: Failure to document wastewater retention facilities, holding pens, or waste/wastewater land application sites were not closer than 500 feet of a public water supply well or 150 feet of a private water well.

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

Compliance History

Customer/Respondent/Owner-Operator: CN601116429 SCHOUTEN, DENNIS JAMES Classification: AVERAGE Rating: 28.71
Regulated Entity: RN102844768 D & L DAIRY Classification: AVERAGE Site Rating: 28.71
ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0004133000
WASTEWATER AGRICULTURE EPA ID TX0128422
Location: LOCATED ON THE WEST SIDE OF ST. HWY. 108, Rating Date: 9/1/2007 Repeat Violator: NO
APPROX. 1.25 MILES SOUTH OF THE INTERSECTION
OF ST. HWY. 108 AND FM 219 IN ERATH CO., TX.
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 07, 2003 to July 07, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee Hupp Phone: 512-239-4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

Effective Date: 01/30/2004 ADMINORDER 2001-1005-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)

Rqmt Prov: VI B 1 b PERMIT
VII(2) PERMIT

Description: Failed to stop waste and wastewater application to a field after soil analysis results indicated phosphorus levels in excess 200ppm.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: IV PERMIT
VII(2) & (4) PERMIT

Description: Failed to include all retention control structures in the permit application.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(24)(A)

Rqmt Prov: VI (F)(2) and VII(2) PERMIT

Description: Failed to provide adequate containment structures for all manure storage piles.

Classification: Minor

Citation: 30 TAC Chapter 220, SubChapter B 220.21
30 TAC Chapter 305, SubChapter F 305.125(1)

30 TAC Chapter 305, SubChapter M 305.503

Rqmt Prov: Sections VII(5) and (2) PERMIT

Description: Failed to pay the Wastewater Treatment Inspection Fee & Water Quality Assessment Fee in a timely manner.

Effective Date: 02/25/2008

ADMINORDER 2007-0624-AGR-E

Classification: Major

Citation: 30 TAC Chapter 321, SubChapter B 321.42(s)

Description: Failure to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/25/2004	(290674)
2	04/07/2005	(374968)
3	01/18/2006	(451439)
4	11/27/2006	(519359)
5	03/29/2007	(543782)
6	11/09/2007	(596882)
7	06/20/2008	(683198)

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

Date 04/04/2005 (374968)

Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)

Description: Failure to submit soil sample results within the required 60 days to the TCEQ

Date 10/04/2007 (596882)

Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.40(7)

Description: Failure to document wastewater retention facilities, holding pens, or waste/wastewater land application sites swere not closer than 500 feet of a public water supply well or 150 feet of a private water well.

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

Compliance History

Customer/Respondent/Owner-Operator: CN602951220 SCHOUTEN, CORNELIUS THOMAS Classification: AVERAGE Rating: 28.71
Regulated Entity: RN102844768 D & L DAIRY Classification: AVERAGE Site Rating: 28.71
ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0004133000
WASTEWATER AGRICULTURE EPA ID TX0128422
Location: LOCATED ON THE WEST SIDE OF ST. HWY. 108, Rating Date: September 01 07
APPROX. 1.25 MILES SOUTH OF THE INTERSECTION Repeat Violator: NO
OF ST. HWY. 108 AND FM 219 IN ERATH CO., TX.
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 07, 2003 to July 07, 2008

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

Name: Merrilee Hupp Phone: 512-239-4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

Effective Date: 01/30/2004 ADMINORDER 2001-1005-AGR-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)

Rqmt Prov: VI B 1 b PERMIT
VII(2) PERMIT

Description: Failed to stop waste and wastewater application to a field after soil analysis results indicated phosphorus levels in excess 200ppm.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: IV PERMIT
VII(2) & (4) PERMIT

Description: Failed to include all retention control structures in the permit application.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.39(f)(24)(A)

Rqmt Prov: VI (F)(2) and VII(2) PERMIT

Description: Failed to provide adequate containment structures for all manure storage piles.

Classification: Minor

Citation: 30 TAC Chapter 220, SubChapter B 220.21
30 TAC Chapter 305, SubChapter F 305.125(1)

30 TAC Chapter 305, SubChapter M 305.503

Rqmt Prov: Sections VII(5) and (2) PERMIT

Description: Failed to pay the Wastewater Treatment Inspection Fee & Water Quality Assessment Fee in a timely manner.

Effective Date: 02/25/2008

ADMINORDER 2007-0624-AGR-E

Classification: Major

Citation: 30 TAC Chapter 321, SubChapter B 321.42(s)

Description: Failure to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/25/2004	(290674)
2	04/07/2005	(374968)
3	01/18/2006	(451439)
4	11/27/2006	(519359)
5	03/29/2007	(543782)
6	11/09/2007	(596882)
7	06/20/2008	(683198)

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

Date 04/04/2005 (374968)

Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.42(j)

Description: Failure to submit soil sample results within the required 60 days to the TCEQ

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Self Report? NO

Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.40(7)

Description: Failure to document wastewater retention facilities, holding pens, or waste/wastewater land application sites swere not closer than 500 feet of a public water supply well or 150 feet of a private water well.

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
DENNIS JAMES SCHOUTEN,
CORNELIUS THOMAS SCHOUTEN,
AND NICHOLAS SCHOUTEN DBA
D & L DAIRY
RN102844768

§ BEFORE THE
§
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY
§

**AGREED ORDER
DOCKET NO. 2008-1097-AGR-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own a dairy farm located on the west side of State Highway 108, approximately 1.25 miles south of the intersection of State Highway 108 and Farm-to-Market Road 219 in Erath County, Texas (the "Facility").
2. The Respondents have discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about July 2, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Two Hundred Fifteen Dollars (\$5,215) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Forty-Three Dollars (\$1,043) of the administrative penalty and One Thousand Forty-Three Dollars (\$1,043) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Three Thousand One Hundred Twenty-Nine Dollars (\$3,129) of the administrative penalty shall be payable in three monthly payments of One Thousand Forty-Three Dollars (\$1,043) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Respondents 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 the Respondents have implemented the following corrective measures at the Facility:
 - a. On May 5, 2008, stopped the discharge by pumping wastewater from Retention Control Structure ("RCS") No. 1 onto a field designated by the TCEQ investigator; and
 - b. On September 8, 2008, submitted an RCS Management Plan.
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 Respondents have 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 owners of the Facility, the Respondents are alleged to have:

1. Failed to develop and implement a RCS management plan following permit issuance, in violation of 30 TEX. ADMIN. CODE § 321.42(g) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. WQ0004133000, Part X, Special Provisions A.3, as documented during an investigation conducted on May 5, 2008. Specifically, a RCS management plan was not developed following the March 5, 2008 issuance of a new permit.
2. Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the designed rainfall event resulting in discharges from the concrete settling basin and from RCS No. 1, in violation of 30 TEX. ADMIN. CODE § 321.36(c), TEX. WATER CODE § 26.121(a), and TPDES General Permit No. WQ0004133000, Part VII, Section A.5.(a)(1), as documented during an investigation conducted on May 5, 2008. Specifically, evidence of a discharge was observed at the concrete settling basin and a discharge was observed from RCS No. 1 over the dam of the pond levee and into water in the state.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy, Docket No. 2008-1097-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, begin implementation of the RCS Management Plan;
- b. Immediately upon the effective date of this Agreed Order, begin properly operating and maintaining the settlement basin and all RCSs, including spillways, to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the 25-year, ten-day design rainfall event; and
- c. Within 30 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 Nos. 3.a and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
5. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy
DOCKET NO. 2008-1097-AGR-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

5/5/2009
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

9-30-08
Date

Dennis Schouten
Name (Printed or typed)
Authorized Representative of
Dennis James Schouten dba D & L 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 I of this Agreed Order.

Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy
DOCKET NO. 2008-1097-AGR-E

Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

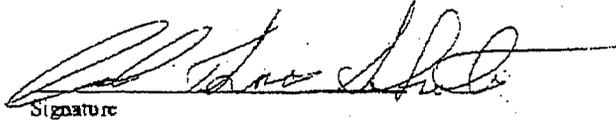
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- TCEQ seeking other relief as authorized by law.

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


Signature

9-29-08
Date

CORNELIUS THOMAS SCHOUTEN
Name (Printed or typed)
Authorized Representative of
Cornelius Thomas Schouten dba D & L 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.

Dennis James Schouten, Cornelius Thomas Schouten, and Nicholas Schouten dba D & L Dairy
DOCKET NO. 2008-1097-AGR-E
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

5/5/2009
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- TCEQ seeking other relief as authorized by law.

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

[Signature]
Signature

9-29-08
Date

NICHOLAS
Nick Schouten
Name (Printed or typed)

OWNER
Title

Authorized Representative of
Nicholas Schouten dba D & L Dairy

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