

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2009-1389-AGR-E **TCEQ ID:** RN102096831 **CASE NO.:** 38261
RESPONDENT NAME: Gerrit Lozeman dba Tatamo 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: Tatamo Dairy, located northeast of Sulphur Springs on the north side of Farm-to-Market Road ("FM") 1536, approximately 0.75 mile northwest of the intersection of FM 71 and FM 1536, Hopkins County</p> <p>TYPE OF OPERATION: Dairy operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 28, 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: Mr. Gerrit Lozeman, Owner, Tatamo Dairy, 5187 Farm-to-Market Road 1536, Dike, Texas 75437 Mr. Jacob Koorevaar, Manager, Tatamo Dairy, 5187 Farm-to-Market Road 1536, Dike, Texas 75437 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: June 4, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 7, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to locate manure and compost areas in the drainage area of the Retention Control Structure ("RCS"). Specifically, a carcass compost area was located about one half mile north of the RCS and a manure area was located just south of the RCS, to the east of the freestyle barns, but neither of these areas were within the drainage area of an RCS [30 TEX. ADMIN. CODE § 321.39(e) and (f) and TCEQ Concentrated Animal Feeding Operations ("CAFO") General Permit TXG920032 Part III.A.8(c) and B.4].</p> <p>2) Failure to maintain the normal operating wastewater level in the RCS in accordance with the design of the RCS. Specifically, the wastewater level in the RCS was above the pump mark required to preserve the storage volume needed for the design rainfall event and approximately 18 inches below the top of the embankment [30 TEX. ADMIN. CODE § 321.39(b)(2) and TCEQ CAFO General Permit TXG920032 Part III.A.9(a)(2)].</p> <p>3) Failure to update the Pollution Prevention Plan ("PPP") to include descriptions of the silage, manure storage, dead cattle compost, and denuded areas which are potential pollutant sources. Specifically, these pollutant sources were not identified in the PPP and measures were not included that will be used to</p>	<p>Total Assessed: \$2,600</p> <p>Total Deferred: \$520 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$520 (remaining \$1,560 due in 3 monthly payments of \$520 each)</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 September 2, 2009, relocated and bermed the manure and compost areas to be within the drainage area of RCS No. 1;</p> <p>b. By September 2, 2009, applied wastewater from RCS No. 2 until a freeboard between four and five feet was attained to preserve the storage volume needed for the design rainfall event; and</p> <p>c. By September 10, 2009, updated the PPP to include the manure and compost areas as potential sources of pollutants as well as descriptions as to how the pollutants from those areas were to be managed. Additional fencing had also been constructed to eliminate a potential source of pollutants.</p>

prevent contamination from these sources [30 TEX. ADMIN. CODE § 321.46(a)(6) and TCBQ CAFO General Permit TXG920032 Part III.A.4(a)].		
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Additional ID No(s): TXG920032



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	10-Aug-2009	Screening	25-Aug-2009	EPA Due	
	PCW	25-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Gerrit Lozeman dba Tatamo Dairy		
Reg. Ent. Ref. No.	RN102096831		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38261	No. of Violations	3
Docket No.	2009-1389-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) 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 Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

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

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 25-Aug-2009

Docket No. 2009-1389-AGR-E

PCW

Respondent Gerrit Lozeman dba Tatamo Dairy

Policy Revision 2 (September 2002)

Case ID No. 38261

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102096831

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 <i>(number of NOVs meeting criteria)</i>	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> **Repeat Violator (Subtotal 3)**

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

The Respondent received two NOV's for same or similar violations.

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

Screening Date 25-Aug-2009	Docket No. 2009-1388-AGR-E	PCW																												
Respondent Gerrit Lozeman dba Tatamo Dairy		<small>Policy Revision 2 (September 2002)</small>																												
Case ID No. 38261		<small>PCW Revision October 30, 2008</small>																												
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Violation Number 1																														
Rule Cite(s)	30 Tex. Admin. Code § 321.39(e) and (f) and Texas Commission on Environmental Quality ("TCEQ") Concentrated Animal Feeding Operations ("CAFO") General Permit TXG920032 Part III.A.8(c) and B.4																													
Violation Description	Failed to locate manure and compost areas in the drainage area of the retention control structure ("RCS"), as documented during an investigation conducted on June 4, 2009. Specifically, a carcass compost area was located about one half mile north of the RCS and a manure area was located just south of the RCS, to the east of the freestyle barns, but neither of these areas were within the drainage area of an RCS.																													
	Base Penalty	\$10,000																												
>> Environmental, Property and Human Health Matrix																														
	Harm																													
	Major	Moderate	Minor																											
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Actual</td> <td style="width:33%;"></td> <td style="width:33%;"></td> <td style="width:33%;"></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td style="text-align: center;">X</td> <td></td> </tr> </table>		Actual				Potential		X		Percent 10%																			
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	Adjustment		\$9,000																											
			\$1,000																											
Violation Events																														
	Number of Violation Events	2	Number of violation days																											
		82																												
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			\$2,000																											
	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Two quarterly events (one for each location with improperly placed waste) are recommended from the June 4, 2009 investigation date to the August 25, 2009 screening date. </div>																													
Good Faith Efforts to Comply																														
	10.0% Reduction		\$200																											
	Before NOV	NOV to EDRP/ Settlement Offer																												
Extraordinary																														
Ordinary		X																												
N/A		(mark with x)																												
Notes	The Respondent achieved compliance by September 2, 2009.																													
	Violation Subtotal		\$1,800																											
Economic Benefit (EB) for this violation			Statutory Limit Test																											
	Estimated EB Amount	\$18	Violation Final Penalty Total																											
			\$2,000																											
	This violation Final Assessed Penalty (adjusted for limits)		\$2,000																											

Economic Benefit Worksheet

Respondent Gerrit Lozeman dba Tatamo Dairy
Case ID No. 38261
Reg. Ent. Reference No. RN102096831
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	4-Jun-2009	2-Sep-2009	0.25	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost for the relocation and berming of the compost and manure areas to be within the drainage area of the RCS. Date required is the investigation date and the 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	\$1,500	TOTAL	\$18
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Screening Date 25-Aug-2009 Respondent Gerrit Lozeman dba Tatamo Dairy Case ID No. 38261 Reg. Ent. Reference No. RN102096831 Media [Statute] Water Quality Enf. Coordinator Merrilee Hupp Violation Number 2 Rule Cite(s) 30 Tex. Admin. Code § 321.39(b)(2) and TCEQ CAFO General Permit TXG920032 Part III.A.9(a)(2)	Docket No. 2009-1389-AGR-E PGW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2008</i>																																			
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Extraordinary																																				
Ordinary		x																																		
N/A		(mark with x)																																		
Notes	The Respondent achieved compliance by September 2, 2009.																																			
Violation Subtotal \$450																																				
Economic Benefit (EB) for this violation																																				
Estimated EB Amount \$7	Statutory Limit Test																																			
Violation Final Penalty Total \$500																																				
This violation Final Assessed Penalty (adjusted for limits) \$500																																				

Economic Benefit Worksheet

Respondent Gerrit Lozeman dba Tatamo Dairy
Case ID No. 38281
Reg. Ent. Reference No. RN102096831
Media Water Quality
Violation No. 2

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
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	\$600	4-Jun-2009	2-Sep-2009	0.25	\$7	\$7
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to apply wastewater to land management units to bring RCS wastewater level within the design of the RCS. Date required is the investigation date and final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$600 **TOTAL** \$7

Screening Date 25-Aug-2009	Docket No. 2009-1389-AGR-E														
Respondent Gerrit Lozeman dba Tatamo Dairy	PCW <small>Policy Revision 2 (September 2002)</small>														
Case ID No. 38261	<small>PCW Revision October 30, 2009</small>														
Reg. Ent. Reference No. RN102098831															
Media [Statute] Water Quality															
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Violation Number 3															
Rule Cite(s)	30 Tex. Admin. Code § 321.46(a)(6) and TCEQ CAFO General Permit TXG920032 Part III.A.4(a)														
Violation Description	Failed to update the Pollution Prevention Plan ("PPP") to identify and include descriptions of the sludge, manure storage, dead cattle compost, and denuded areas as potential pollutant sources, as documented during an investigation conducted on June 4, 2009. Specifically, these pollutant sources were not identified or described in the PPP, nor were the measures that will be used to prevent contamination from these pollutant sources indicated in the PPP.														
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Release	Major Moderate Minor														
Actual	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>														
Potential	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>														
OR	Percent 0%														
>> Programmatic Matrix															
Falsification Major Moderate Minor															
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>															
Percent 1%															
Matrix Notes	Over 70% of the permit requirement was met.														
Adjustment \$9,900															
\$100															
Violation Events															
Number of Violation Events	1 82 Number of violation days														
mark only one with an x	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="checkbox"/></td></tr> <tr><td>weekly</td><td><input type="checkbox"/></td></tr> <tr><td>monthly</td><td><input type="checkbox"/></td></tr> <tr><td>quarterly</td><td><input type="checkbox"/></td></tr> <tr><td>semiannual</td><td><input type="checkbox"/></td></tr> <tr><td>annual</td><td><input type="checkbox"/></td></tr> <tr><td>single event</td><td><input checked="" type="checkbox"/></td></tr> </table>	daily	<input type="checkbox"/>	weekly	<input type="checkbox"/>	monthly	<input type="checkbox"/>	quarterly	<input type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input checked="" type="checkbox"/>
daily	<input type="checkbox"/>														
weekly	<input type="checkbox"/>														
monthly	<input type="checkbox"/>														
quarterly	<input type="checkbox"/>														
semiannual	<input type="checkbox"/>														
annual	<input type="checkbox"/>														
single event	<input checked="" type="checkbox"/>														
Violation Base Penalty \$100															
One single event is recommended based on the June 4, 2009 investigation date when the violation was documented.															
Good Faith Efforts to Comply															
10.0% Reduction															
Before NOV NOV to EDRP/Settlement Offer															
Extraordinary	<input type="checkbox"/> <input type="checkbox"/>														
Ordinary	<input type="checkbox"/> <input checked="" type="checkbox"/>														
N/A	<input type="checkbox"/> (mark with x)														
Notes	The Respondent achieved compliance by September 10, 2009.														
Violation Subtotal \$90															
Economic Benefit (EB) for this violation															
Statutory Limit Test															
Estimated EB Amount	\$11 Violation Final Penalty Total \$100														
This violation Final Assessed Penalty (adjusted for limits) \$100															

Economic Benefit Worksheet

Respondent Gerrit Lozeman dba Tatamo Dairy
Case ID No. 38261
Reg. Ent. Reference No. RN102096831
Media Water Quality
Violation No. 3

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	\$500	4-Jun-2009	2-Sep-2009	0.25	\$0	\$6	\$9
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	4-Jun-2009	10-Sep-2009	0.27	\$3	n/a	\$3

Notes for DELAYED costs
 Estimated cost to update the PPP to include additional potential sources of pollutants and to provide descriptions of how each additional source would be managed to prevent pollution. Cost includes the construction of an additional fence to eliminate a potential pollutant source. Date required is the investigation date and final dates are the dates 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	\$11
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Compliance History Report

Customer/Respondent/Owner-Operator: CN601130412 LOZEMAN, GERRIT Classification: AVERAGE Rating: 0.63
Regulated Entity: RN102096831 TATAMO DAIRY Classification: AVERAGE Site Rating: 0.63
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920032
Location: NE of Sulphur Springs on N. side of FM 1536, appx. 0.75 mi NW of Intersec. of
FM 71 and FM 1536, Hopkins Co., Tx.
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: August 25, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 25, 2004 to August 25, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee G. 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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
N/A
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

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

C. Chronic excessive emissions events.
N/A

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

1 10/05/2005 (433143)

2 10/06/2005 (431760)

3 10/27/2006 (517478)

4 06/19/2007 (563204)

5 05/14/2008 (654870)

6 08/04/2008 (687765)

7 08/03/2009 (748817)

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

Date: 05/15/2008 (654870) CN601130412

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(b)(2)

Description: Failure to maintain the normal operating wastewater level in the retention control structure(RCS) within the design of the RCS.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to operate a concentrated animal feeding operation authorized under a general permit that caused or allowed a discharge or disposal of manure, litter, or wastewater into or adjacent to waters in the state.

Date: 08/08/2008 (687765) CN601130412

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(e)

TXG920000 Part III.A.8(c) PERMIT

Description: Failure to locate temporary waste storage and compost sites inside the drainage area of the RCS or in an LMU and protected by berms.

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
GERRIT LOZEMAN DBA TATAMO
DAIRY
RN102096831

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1389-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 Gerrit Lozeman dba Tatamo Dairy ("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 dairy operation northeast of Sulphur Springs on the north side of Farm-to-Market Road ("FM") 1536, approximately 0.75 mile northwest of the intersection of FM 71 and FM 1536 in Hopkins 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 this chapter or of any 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 August 12, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Six Hundred Dollars (\$2,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Twenty Dollars (\$520) of the administrative penalty and Five Hundred Twenty Dollars (\$520) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of One Thousand Five Hundred Sixty Dollars (\$1,560) of the administrative penalty shall be payable in three monthly payments of Five Hundred Twenty Dollars (\$520) 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 Respondent fails 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 Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 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 the Respondent has implemented the following corrective measures at the Facility:
 - a. By September 2, 2009, relocated and bermed the manure and compost areas to be within the drainage area of Retention Control Structure ("RCS") No. 1;
 - b. By September 2, 2009, applied wastewater from RCS No. 2 until a freeboard between four and five feet was attained to preserve the storage volume needed for the design rainfall event; and
 - c. By September 10, 2009, updated the Pollution Prevention Plan ("PPP") to include the manure and compost areas as potential sources of pollutants as well as descriptions as to how the pollutants from those areas were to be managed. Additional fencing had also been constructed to eliminate a potential source of pollutants.
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 locate manure and compost areas in the drainage area of the RCS, in violation of 30 TEX. ADMIN. CODE § 321.39(e) and (f) and TCEQ Concentrated Animal Feeding Operations ("CAFO") General Permit TXG920032 Part III.A.8(c) and B.4, as documented during an investigation conducted on June 4, 2009. Specifically, a carcass compost area was located about one half mile north of the RCS and a manure area was located just south of the RCS, to the east of the freestyle barns, but neither of these areas were within the drainage area of an RCS.
2. Failed to maintain the normal operating wastewater level in the RCS in accordance with the design of the RCS, in violation of 30 TEX. ADMIN. CODE § 321.39(b)(2) and TCEQ CAFO General Permit TXG920032 Part III.A.9(a)(2), as documented during an investigation conducted on June 4, 2009. Specifically, the wastewater level in the RCS was above the pump mark required to preserve the storage volume needed for the design rainfall event and approximately 18 inches below the top of the embankment.
3. Failed to update the PPP to include descriptions of the silage, manure storage, dead cattle compost, and denuded areas which are potential pollutant sources, in violation of 30 TEX. ADMIN. CODE § 321.46(a)(6) and TCEQ CAFO General Permit TXG920032 Part III.A.4(a), as documented during an investigation conducted on June 4, 2009. Specifically, these pollutant sources were not identified in the PPP and measures were not included that will be used to prevent contamination from these sources.

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: Gerrit Lozeman dba Tatamo Dairy, Docket No. 2009-1389-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 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. 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.
4. 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.
5. 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.
6. 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.
7. 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 Siddle

For the Executive Director

12/11/2009

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

10-15-09

Date

Jacob Koorewaar P.O.A.

Name (Printed or typed)
Authorized Representative of
Gerrit Lozeman dba Tatamo Dairy

Manager

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.

