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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0865-AGR-E **TCEQ ID:** RN102180957 **CASE NO.:** 39754  
**RESPONDENT NAME:** Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Brown-Tex Feedlot, 1900 Farm-to-Market Road 2126, Brown County</p> <p><b>TYPE OF OPERATION:</b> Concentrated animal feeding operation ("CAFO")</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> <b>Yes</b>    <input type="checkbox"/> <b>No</b></p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on March 8, 2010 alleging an unauthorized discharge on the adjacent property and odor. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 18, 2010. 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 169, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Kenneth Harvick, President, Gore's, Inc. and Aaron Lee Speck, 303 Lucas Drive, Brownwood, Texas 76802  Mr. Aaron Lee Speck, Operator, Brown-Tex Feedlot, 303 Lucas Drive, Brownwood, Texas 76802  <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 checked="" type="checkbox"/> Complaint  <input 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> March 8, 2010</p> <p><b>Date of Investigation Relating to this Case:</b> March 23, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 14, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failed to prevent the unauthorized discharges of waste from a CAFO. Specifically, the investigator documented that a discharge was occurring from the stockpile of covered silage on the Site and was flowing onto the adjacent property and into a small pond on the property. Samples were taken of the pooled silage wastewater near the property line and from the freshwater pond on the adjacent property that indicated elevated levels of pollutants. Also, cattle were located in confinement pens on the north side of the Site and there was no RCS or other system being utilized to properly contain wastewater generated. A flow path from the drainage area below the confinement pens was observed leading off-site, crossing under a culvert on Farm-to-Market Road 2126. Samples were taken from pooled water at the culvert that indicated elevated levels of pollutants. The investigator also documented that a buildup of vegetation and debris along a fence line where wastewater is channeled into the RCS was causing some wastewater to flow over the top of the diversion berm during rainfall events and bypass the RCS [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.36(c) and 321.37(d), and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920256 Part II.A.].</p>	<p><b>Total Assessed:</b> \$16,147</p> <p><b>Total Deferred:</b> \$3,229  <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> \$12,918</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 the Respondents have implemented the following corrective measures at the Facility:</p> <p>a. On April 29, 2010, submitted photographs documenting that the silage berms were reconstructed to contain the silage wastewater and that the wastewater was being collected and deposited into the retention control structure ("RCS"); and</p> <p>b. On June 10, 2010, sent in the updated PPP site map that provides an accurate depiction of all the production areas.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, either construct and maintain control structures to manage waste, storm water, and wastewater from the confinement pens and associated areas, and from the south side of the Site, in a manner that will protect surface and ground water quality or remove cattle from all areas of the Site that do not have control structures in place;</p> <p>b. Within 75 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.</p>

<p>2) Failed to properly update the Pollution Prevention Plan (PPP) site map. Specifically, the investigator documented that the site map did not provide an accurate depiction of all the production areas and that the production area where the silage stockpiles were located was not depicted [30 TEX. ADMIN. CODE § 321.46(a)(7)(6) and TPDES CAFO General Permit No. TXG920256 Part III.A.2.(a)].</p>		
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Additional ID No(s): TPDES CAFO General Permit No. TXG920256





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	17-May-2010	Screening	21-May-2010	EPA Due	
	PCW	8-Jun-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot
Reg. Ent. Ref. No.	RN102180957
Facility/Site Region	3-Abilene Major/Minor Source Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39754	No. of Violations	2
Docket No.	2010-0865-AGR-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>	<b>\$15,100</b>
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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>	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,057</b>
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Notes: Enhancement recommended for having one NOV for the same or similar violations and one NOV for non-similar violations within the last five years.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$10</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$621
Approx. Cost of Compliance	\$10,100

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$16,147</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$16,147

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$16,147</b>
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	<b>-\$3,229</b>
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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>	<b>\$12,918</b>
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Screening Date 21-May-2010

Docket No. 2010-0865-AGR-E

PCW

Respondent Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlk

Policy Revision 2 (September 2002)

Case ID No. 39754

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180957

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for having one NOV for the same or similar violations and one NOV for non-similar violations within the last five years.

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

Screening Date 21-May-2010

Docket No. 2010-0865-AGR-E

PCW

Respondent Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot

Policy Revision 2 (September 2002)

Case ID No. 39754

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180957

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code §§ 921.36(c) and 921.37(d), and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920266 Part II.A.

Violation Description

Failed to prevent the unauthorized discharges of waste from a CAFO. Specifically, the investigator documented that a discharge was occurring from the stockpile of covered silage on the Site and was flowing onto the adjacent property and into a small pond on the property. Samples were taken of the pooled silage wastewater near the property line and from the freshwater pond on the adjacent property that indicated elevated levels of pollutants. Also, cattle were located in confinement pens on the north side of the Site and there was no retention control structure ("RCS") or other system being utilized to properly contain wastewater generated. A flow path from the drainage area below the confinement pens was observed leading off-site, crossing under a culvert on Farm-to-Market Road 2126. Samples were taken from pooled water at the culvert that indicated elevated levels of pollutants. The investigator also documented that a buildup of vegetation and debris along a fence line where wastewater is channeled into the RCS was causing some wastewater to flow over the top of the diversion berm during rainfall events and bypass the RCS. See attached table for sample results.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual			X		25%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 6 Number of violation days 63

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Six monthly events (two months for each discharge) are recommended from the investigation date, March 23, 2010, to the date of screening, May 21, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$619

Violation Final Penalty Total \$16,050

This violation Final Assessed Penalty (adjusted for limits) \$16,050

## Economic Benefit Worksheet

**Respondent:** Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot

**Case ID No.:** 39754

**Reg. Ent. Reference No.:** RN102180957

**Media:** Water Quality

**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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	\$10,000	23-Mar-2010	9-Feb-2011	0.88	\$29	\$590	\$619
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

The estimated cost to construct control structures to manage waste, storm water, and wastewater from the Site. Date required is the date of the investigation and the final date is the estimated date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$619

Screening Date 21-May-2010

Docket No. 2010-0865-AGR-E

PCW

Respondent Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot

Policy Revision 2 (September 2002)

Case ID No. 39754

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102180957

Media (Statute) Water Quality

Enf. Coordinator Samuel Short

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 321.46(a)(7)(B) and TPDES CAFD General Permit No. TXG920256 Part III.A.2.(a)

Violation Description

Failed to properly update the pollution prevention plan ("PPP") site map. Specifically, the investigator documented that the site map did not provide an accurate depiction of all the production areas and that the production area where the silage stockpiles were located was not depicted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
			X	1%

Matrix Notes

At least 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 63

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$10

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

Notes The Respondents returned to compliance on June 10, 2010.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$97

This violation Final Assessed Penalty (adjusted for limits) \$97

## Economic Benefit Worksheet

**Respondent** Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot  
**Case ID No.** 39754  
**Reg. Ent. Reference No.** RN102180957  
**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
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)	\$100	23-Mar-2010	10-Jun-2010	0.22	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to update the PPP site map to include accurate depictions of all the production areas. Date required is the date of the investigation and the 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

\$100

TOTAL

\$1

**SAMPLE RESULTS**

Investigation Date: March 23, 2010

Gore's, Inc. and Aaron Lee Speck dba Brown Text Feedlot

Docket No. 2010-0865-AGR-EI

Parameter	pooled silage	adjacent property	culvert	background drainage area
Ammonia	2.38 mg/L	0.2 mg/L	2.13 mg/L	<0.05 mg/L
BOD	730 mg/L	219 mg/L	<60 mg/L	<30 mg/L
CBOD	779 mg/L	218 mg/L	<60 mg/L	<30 mg/L
Chemical Oxygen Demand	1870 mg/L	659 mg/L	218 mg/L	32 mg/L
Total Phosphorus	19.8 mg/L	15 mg/L	7.48 mg/L	0.08 mg/L
Total Kjeldahl Nitrogen	58.2 mg/L	21.4 mg/L	9.92 mg/L	0.81 mg/L
Total Organic Carbon	525 mg/L	219 mg/L	49 mg/L	11 mg/L
Total Suspended Solids	310 mg/L	166 mg/L	60 mg/L	18 mg/L
Volatile Suspended Solids	270 mg/L	128 mg/L	20 mg/L	6 mg/L

Name	Abbreviation
biochemical oxygen demand	BOD
carbonaceous biochemical oxygen demand	CBOD
milligrams per liter	mg/L
less than	<



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602845703    SPECK, AARON LEE	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102180957    BROWN-TEX FEEDLOT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER AGRICULTURE	PERMIT	WQ0001756000
	WASTEWATER AGRICULTURE	REGISTRATION	TXG015162
	WASTEWATER AGRICULTURE	PERMIT	TXG920256
Location:	1900 FM 2126, BROWN COUNTY, TEXAS		
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	May 25, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 25, 2005 to May 25, 2010		

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/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
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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.
 

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	08/23/2005	(406440)
2	09/07/2005	(431017)
3	10/05/2005	(433618)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	09/01/2005	(406440)
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TXG920256 PERMIT	
Description:	Failure to provide weekly records of nitrogen and phosphorus applied per acre.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TXG920256 PERMIT	
Description:	Failure to provide weekly records of actual annual yield of each harvested crop. During the investigation weekly records of actual yield were not being maintained.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TXG920256 PERMIT	
Description:	Failure to have the recharge feature certification sealed by a licensed professional geoscientist or a licensed professional engineer.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	

Description: TXG920256 PERMIT  
Failure to provide a capacity certification for the retention control structure (RCS) from a llcenced Texas Professional Engineer .

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TXG920256 PERMIT

Description: Failure to maintain the retention control structure.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TXG920256 PERMIT

Description: Failure to have a llcenced Texas professional engineer, or a licensed Texas professional geoscientist review the liner documentation and conduct a site evaluation every five years. During the investigation a site evaluation was not available.

Date: 03/24/2010 (795534) CN602845703

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.37(d)  
Discharges Eligible for Authorization PERMIT

Description: Failure to prevent an unauthorized discharge of wastewater.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(6)  
Pollution Prevention Plan Requirements PERMIT

Description: Failure to properly update the PPP.

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 Report

Customer/Respondent/Owner-Operator:	CN600789531 Gore's, Inc.	Classification: AVERAGE	Rating: 1.38
Regulated Entity:	RN102180957 BROWN-TEX FEEDLOT	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	WASTEWATER AGRICULTURE	PERMIT	WQ0001756000
	WASTEWATER AGRICULTURE	REGISTRATION	TXG015162
	WASTEWATER AGRICULTURE	PERMIT	TXG920256
Location:	1900 FM 2126, BROWN COUNTY, TEXAS		
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	May 25, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 25, 2005 to May 25, 2010		
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/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
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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.  
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	08/23/2005	(406440)
2	09/07/2005	(431017)
3	10/05/2005	(433618)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	09/01/2005	(406440)
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
	TXG920256 PERMIT	
Description:	Failure to provide weekly records of nitrogen and phosphorus applied per acre.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
	TXG920256 PERMIT	
Description:	Failure to provide weekly records of actual annual yield of each harvested crop. During the investigation weekly records of actual yield were not being maintained.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
	TXG920256 PERMIT	
Description:	Failure to have the recharge feature certification sealed by a licensed professional geoscientist or a licensed professional engineer.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
	TXG920256 PERMIT	
Description:	Failure to provide a capacity certification for the retention control structure (RCS) from a licensed Texas Professional Engineer.	

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TXG920256 PERMIT  
 Description: Failure to maintain the retention control structure.

Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TXG920256 PERMIT  
 Description: Failure to have a licensed Texas professional engineer, or a licensed Texas professional geoscientist review the liner documentation and conduct a site evaluation every five years. During the investigation a site evaluation was not available.

Date 03/24/2010 (795534) CN600789531  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.37(d)  
 Discharges Eligible for Authorization: PERMIT  
 Description: Failure to prevent an unauthorized discharge of wastewater.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(6)  
 Pollution Prevention Plan Requirements PERMIT  
 Description: Failure to properly update the PPP.

- 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  
GORE'S, INC. AND AARON LEE  
SPECK DBA BROWN-TEX FEEDLOT  
RN102180957

§  
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§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2010-0865-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 Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot ("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 and operate a concentrated animal feeding operation ("CAFO") at 1900 Farm-to-Market Road 2126 in Brown County, Texas (the "Site").
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 May 19, 2010.
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 Sixteen Thousand One Hundred Forty-Seven Dollars (\$16,147) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Twelve Thousand Nine Hundred Eighteen Dollars

(\$12,918) of the administrative penalty and Three Thousand Two Hundred Twenty-Nine Dollars (\$3,229) 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, the Executive Director may require the Respondents 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 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 April 29, 2010, submitted photographs documenting that the silage berms were reconstructed to contain the silage wastewater and that the wastewater was being collected and deposited into the retention control structure ("RCS"); and
  - b. On June 10, 2010, sent in the updated pollution prevention plan ("PPP") site map that provides an accurate depiction of all the production areas.
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 owner and operator of the Site, the Respondents are alleged to have:

1. Failed to prevent the unauthorized discharges of waste from a CAFO, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.36(c) and 321.37(d), and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG920256 Part II.A., as documented during an investigation conducted on March 23, 2010. Specifically, the investigator documented that a discharge was occurring from the stockpile of covered silage on the Site and was flowing onto the adjacent property and into a small pond on the property. Samples were taken of the pooled silage wastewater near the property line and from the freshwater pond on the adjacent property that indicated elevated levels of pollutants. Also, cattle were located in confinement pens on the north side of the Site and there was no RCS or other system being utilized to properly contain wastewater generated. A flow path from the drainage area below the

confinement pens was observed leading off-site, crossing under a culvert on Farm-to-Market Road 2126. Samples were taken from pooled water at the culvert that indicated elevated levels of pollutants. The investigator also documented that a buildup of vegetation and debris along a fence line where wastewater is channeled into the RCS was causing some wastewater to flow over the top of the diversion berm during rainfall events and bypass the RCS. See table below for sample results.

<b>SAMPLE RESULTS</b>				
Investigation Date: March 23, 2010				
Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot				
Docket No. 2010-0865-AGR-E				
Parameter	pooled silage	adjacent property	culvert	background drainage area
Ammonia	2.38 mg/L	0.2 mg/L	2.13 mg/L	<0.05 mg/L
BOD	730 mg/L	219 mg/L	<60 mg/L	<30 mg/L
CBOD	779 mg/L	218 mg/L	<60 mg/L	<30 mg/L
Chemical Oxygen Demand	1870 mg/L	659 mg/L	218 mg/L	32 mg/L
Total Phosphorus	19.8 mg/L	15 mg/L	7.48 mg/L	0.08 mg/L
Total Kjeldahl Nitrogen	58.2 mg/L	21.4 mg/L	9.92 mg/L	0.81 mg/L
Total Organic Carbon	525 mg/L	219 mg/L	49 mg/L	11 mg/L
Total Suspended Solids	310 mg/L	166 mg/L	60 mg/L	18 mg/L
Volatile Suspended Solids	270 mg/L	128 mg/L	20 mg/L	6 mg/L

Name	Abbreviation
biochemical oxygen demand	BOD
carbonaceous biochemical oxygen demand	CBOD
milligrams per liter	mg/L
less than	<

- Failed to properly update the PPP site map, in violation of 30 TEX. ADMIN. CODE § 321.46(a)(7)(6) and TPDES CAFO General Permit No. TXG920256 Part III.A.2.(a), as documented during an investigation conducted on March 23, 2010. Specifically, the investigator documented that the site map did not provide an accurate depiction of all the production areas and that the production area where the silage stockpiles were located was not depicted.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

- 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: Gore's, Inc. and Aaron Lee Speck dba Brown-Tex Feedlot, Docket No. 2010-0865-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. Within 60 days after the effective date of this Agreed Order, either construct and maintain control structures to manage waste, storm water, and wastewater from the confinement pens and associated areas, and from the south side of the Site, in a manner that will protect surface and ground water quality, in accordance with TPDES CAFO General Permit No. TXG920256 Part II.A. or remove cattle from all areas of the Site that do not have control structures in place;
  - b. Within 75 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. 3.a. 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 fines 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  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

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 Site 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 becomes 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 receives 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 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.
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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Szollos  
For the Executive Director

10/11/2010  
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.

Kenneth Harwick  
Signature

8-12-10  
Date

Kenneth Harwick  
Name (Printed or typed)  
Authorized Representative of  
Gore's, Inc. dba Brown-Tex Feedlot

President  
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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Szalin*  
For the Executive Director

10/11/2010  
Date

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- 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.

*A. Lee Speck*  
Signature

8-16-10  
Date

AARON LEE SPECK  
Name (Printed or typed)  
Authorized Representative of  
Aaron Lee Speck dba Brown-Tex Feedlot

OPERATOR  
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.

