

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-1604-AGR-E **TCEQ ID:** RN101961753 **CASE NO.:** 38487
RESPONDENT NAME: Salvador G. Gonzalez dba Gonzalez Dairy

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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: Gonzalez Dairy, located approximately 10 miles northeast of San Angelo on United States Highway 67 and two miles north off of United States Highway 67 on the east side of Duckworth Road, Harriet, Tom Green County</p> <p>TYPE OF OPERATION: Animal feeding 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 October 25, 2010. 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. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Salvador G. Gonzalez, Owner, Gonzalez Dairy, 7842 Duckworth Road, San Angelo, Texas 76905 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 type="checkbox"/> Routine <input checked="" 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: September 3, 2009</p> <p>Date of NOV/NOE Relating to this Case: September 13, 2009 (NOE)</p> <p>Background Facts: This was a follow-up investigation.</p> <p>WATER</p> <p>1) Failed to install markers showing the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all retention control structures ("RCSs") [30 TEX. ADMIN. CODE § 321.47(e)(6) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.b.ii].</p> <p>2) Failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality [30 TEX. ADMIN. CODE § 321.47(c)(1) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.c].</p> <p>3) Failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality [30 TEX. ADMIN. CODE § 321.47(c)(1)].</p> <p>4) Failed to ensure that the design and construction of the RCS is certified by a licensed Texas professional engineer after its modification or repair [30 TEX. ADMIN. CODE § 321.47(d)(3) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.e].</p>	<p>Total Assessed: \$6,600</p> <p>Total Deferred: \$0 <input 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: \$160 (remaining \$6,440 due in 35 monthly payments of \$184 each)</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Findings Orders Justification:</p> <p>This case involves a violation of a prior Agreed Order. When the Respondent failed to comply with the prior Agreed Order, the Respondent demonstrated an indifference to legal duty.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that by November 2, 2009, the Respondent had plugged the blue pipe passing through the diversion berm and had contained with earthen berms the wastewater runoff from the southeast pen and center feed lane so that runoff from the drainage areas was directed to an RCS.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, ensure the pond markers in all three RCSs are marked to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event;</p> <p>b. Within 45 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>c. Within 90 days after the effective date of this Agreed Order, obtain certification by a licensed Texas professional engineer, signed and sealed in accordance with the requirements of the Texas State Board of Professional Engineers, that modifications to the construction and design of the RCS meet the current technical standards developed by the Natural Resources Conservation Service; and</p> <p>d. Within 105 days after the effective date of this Agreed Order, submit written certification as described in b above, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision c.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	21-Sep-2009			
	PCW	16-Dec-2009	Screening	24-Sep-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Salvador G. Gonzalez dba Gonzalez Dairy
Reg. Ent. Ref. No.	RN101961753
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38487	No. of Violations	4
Docket No.	2009-1604-AGR-E	Order Type	Findings
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** \$5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 35.0% Enhancement **Subtotals 2, 3, & 7** \$1,750

Notes Enhancement due to one NOV for same or similar violations, the issuance of an Agreed Order with denial, and a Poor Performer classification.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$150

Economic Benefit 0.0% Enhancement **Subtotal 6** \$0

Total EB Amounts \$224
Approx. Cost of Compliance \$2,100
**Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$6,600

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$6,600

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$6,600

DEFERRAL 0.0% Reduction **Adjustment** \$0

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$8,600**

Screening Date 24-Sep-2009

Docket No. 2009-1604-AGR-E

PCW

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No. 38487

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101961753

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

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement due to one NOV for same or similar violations, the issuance of an Agreed Order with denial, and a Poor Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 24-Sep-2009

Docket No. 2009-1604-AGR-E

PCW

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No. 38487

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101961753

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.47(e)(8) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.b.ii.

Violation Description

Failed to install markers to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all RCSS, as documented during the September 3, 2009 investigation. Specifically, pond markers had been installed in all three RCSS, but the markings on the pond markers in Pond Nos. 1 and 3 did not include a mark to show the volume for the rainfall event and the markings on the marker for Pond No. 2 had faded and were not legible or visible from the top of the levee.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 3

353 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,500

Three single events (one per marker) are 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 Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31

Violation Final Penalty Total \$2,025

This violation Final Assessed Penalty (adjusted for limits) \$2,025

Economic Benefit Worksheet

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No. 38487
Reg. Ent. Reference No. RN101961753
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
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)	\$400	6-Oct-2008	30-Apr-2010	1.56	\$31	n/a	\$31

Notes for DELAYED costs

Actual cost to survey three ponds and mark the pond markers to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event. Date required is the effective date of the Agreed Order, Docket No. 2008-0405-AGR-E, and final date is the expected 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

\$400

TOTAL

\$31

Screening Date: 24-Sep-2009

Docket No.: 2009-1604-AGR-E

PCW

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No.: 38487

PCW Revision: October 30, 2008

Reg. Ent. Reference No.: RN101961753

Media [Statute]: Water Quality

Enf. Coordinator: Merrilee Hupp

Violation Number: 2

Rule Cite(s):

30 Tex. Admin. Code § 321.47(c)(1) and TCEQ Agreed Order, Docket No: 2008-0405-AGR-E, Ordering Provision No. 2.c

Violation Description:

Failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, as documented during the September 3, 2009 investigation. Specifically, runoff from a portion of the southeast pen and the end of the center feed lane was not being directed into Pond No. 3 by the berm which was constructed for that purpose.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent: 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent: 0%

Matrix Notes:

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment: \$9,500

\$500

Violation Events

Number of Violation Events: 1

353 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty: \$500

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$50

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

Notes:

The Respondent achieved compliance by November 2, 2009.

Violation Subtotal: \$450

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$11

Violation Final Penalty Total: \$825

This violation Final Assessed Penalty (adjusted for limits): \$825

Economic Benefit Worksheet

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Case ID No. 38487

Reg. Ent. Reference No. RN101961753

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)	\$200	6-Oct-2008	2-Nov-2009	1.07	\$11	n/a	\$11

Notes for DELAYED costs

Actual cost for consultant site visit and guidance as to how to direct all runoff into an RCS by constructing additional berms. Date required is the effective date of the Agreed Order, Docket No. 2008-0405-AGR-E, 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

\$200

TOTAL

\$11

Screening Date 24-Sep-2009

Docket No. 2009-1604-AGR-E

PCW

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No. 38487

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101961753

Media [Statute] Water Quality

Enf. Coordinator: Merrilee Hupp

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 321.47(c)(1)

Violation Description

Failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, as documented during the September 3, 2009 investigation. Specifically, a blue pipe was passing through a diversion berm connected to the east embankment of Pond No. 3, allowing wastewater runoff from one of the confinement lots to drain around Pond No. 3 and into a weedy area rather than into the RCS.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 21 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the September 3, 2009 investigation date to the September 24, 2009 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes: The Respondent achieved compliance by November 2, 2009.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

Economic Benefit Worksheet

Respondent: Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No.: 38487
Reg. Ent. Reference No.: RN101961753
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
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit covered in Violation No. 2, since the pipe was plugged without any associated economic benefit.

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

\$0

TOTAL

\$0

Screening Date 24-Sep-2009

Docket No. 2009-1604-AGR-E

PCW

Respondent Salvador G. Gonzalez dba Gonzalez Dairy

Policy Revision 2 (September 2002)

Case ID No. 38487

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101961763

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 321.47(d)(3) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.e

Violation Description

Failed to ensure that the design and construction of Pond No. 1 and Pond No. 2 is certified by a licensed Texas professional engineer after its modification or repair. Specifically, no certification by a Texas professional engineer for the modifications/repairs to the embankments of Pond No. 1 and 2 was available for review during the September 3, 2009 investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%
Matrix Notes: 100% of the requirement was not met.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 353 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$2,000

Two single events are 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 Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$182

Violation Final Penalty Total \$2,700

This violation Final Assessed Penalty (adjusted for limits) \$2,700

Economic Benefit Worksheet

Respondent Salvador G. Gonzalez dba Gonzalez Dairy
Case ID No. 38487
Reg. Ent. Reference No. RN101981753
Media Water Quality
Violation No. 4

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	\$1,500	6-Oct-2008	30-Jun-2010	1.73	\$9	\$173	\$182
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for a licensed Texas professional engineer to certify that the NRCS standards were met after construction or modification of an RCS. Date required is the effective date of the Agreed Order, Docket No. 2008-0405-AGR-E, and final date is the expected date of compliance.

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

\$182

Compliance History Report

Customer/Respondent/Owner-Operator: Salvador G. Gonzalez dba Gonzalez Classification: POOR Rating: 81.00
Dairy
CN601075583

Regulated Entity: RN101981753 GONZALEZ DAIRY Classification: POOR Site Rating: 81.00
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER TG0132E
Location: approx. 10 mi. NE of San Angelo on U.S. Hwy.67,
2 mi. N. off of U.S. Hwy. 67 on E. side of Duckworth Rd
in Harriet, Tom Green County, Tx.

TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: September 21, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 21, 2004 to September 21, 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
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 judgments, and consent decrees of the state of Texas and the federal government.
Effective Date: 10/06/2008 ADMINORDER 2008-0405-AGR-E
Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.47(e)(6)
Description: Failure to locate and maintain the required permanent pond marking device in any of the three RCSs on site.
- Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.38(e)(7)
Description: Failure to provide documentation upon request for non-sole-source AFOs using irrigation systems and clearly illustrating the requirements of all three RCSs designed rainfall runoff events and the design capacity requirements for systems using irrigation.
- Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.47(e)(7)
Description: Failure to adequately maintain and protect the liners and embankments of the three retention control structure's (RCS) against animal intrusion, tree growth and mechanical or structural damage in accordance with these requirements. Failure to maintain the interior and exterior embankments of the three RCS.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(l)

Description: Failure to maintain the record keeping activities applicable of an AFO operator who uses a control facility to manage manure, litter and/or wastewater generated on site. Failure to comply with record keeping requirements.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(c)(1)

Description: Failure to manage the control facilities and land management units (LMUs) in the manner to protect surface and ground water quality.

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 02/21/2008 (615714)

2 04/02/2009 (738774)

3 09/16/2009 (775201)

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

Date: 11/21/2005 (435816)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(e)(6)

Description: Failure to locate and maintain the required permanent pond marking device in any of the three RCSs on site.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.38(e)(7)

Description: Failure to provide documentation upon request for non-sole-source AFOs using irrigation systems and clearly illustrating the requirements of all three RCSs designed rainfall runoff events and the design capacity requirements for systems using irrigation.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(e)(7)

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Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(l)

Description: Failure to maintain the record keeping activities applicable of an AFO operator who uses a control facility to manage manure, litter and/or wastewater generated on site. Failure to comply with record -keeping requirements.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(c)(1)

Description: Failure to manage the control facilities and land management units (LMUs) in the manner to protect surface and ground water quality.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(c)(2)

Description: Failure to properly operate and maintain the site to prevent nuisance conditions and minimize odors on site.

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
SALVADOR G. GONZALEZ DBA
GONZALEZ DAIRY
RN101961753

§
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§
§
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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1604-AGR-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Salvador G. Gonzalez dba Gonzalez 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 presented this agreement to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates an animal feeding operation approximately 10 miles northeast of San Angelo on United States Highway 67, two miles north off of United States Highway 67 on the east side of Duckworth Road in Harriet, Tom Green County, Texas (the "Facility").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on September 3, 2009, TCEQ staff observed a pond marker in each of the three RCSs; however, the markings on the pond markers in Ponds Nos. 1 and 3 did not include a mark to show the volume for the rainfall event and the markings on the marker for Pond No. 2 had faded and were not legible or visible from the top of the levee.
4. During an investigation on September 3, 2009, TCEQ staff documented runoff from a portion of the southeast pen and from the end of the center feed lane that was not being directed into Pond No. 3 by the berm which was constructed for that purpose.
5. During an investigation on September 3, 2009, TCEQ staff documented a blue pipe passing through a diversion berm connected to the east embankment of Pond No. 3, allowing wastewater runoff from one of the confinement lots to drain around Pond No. 3 and into a weedy area rather than into the RCS.
6. During an investigation on September 3, 2009, TCEQ staff documented the Respondent stating that repairs/modifications had been done to the embankments of Pond No. 1 and Pond No. 2, yet no documentation certified by a Texas professional engineer was provided to show that the construction or modifications were done in accordance with Natural Resources Conservation Service ("NRCS") standards.
7. The Respondent received notice of the violations on September 18, 2009.
8. The Executive Director recognizes that by November 2, 2009, the Respondent had plugged the blue pipe passing through the diversion berm and had contained with earthen berms the wastewater runoff from the southeast pen and center feed lane so that runoff from the drainage areas was directed to an RCS.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to install markers showing the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event in all RCSs, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(6) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.b.ii.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, in violation of 30 TEX. ADMIN. CODE § 321.47(c)(1) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.c.

4. As evidenced by Findings of Fact No. 5, the Respondent failed to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, in violation of 30 TEX. ADMIN. CODE § 321.47(c)(1).
5. As evidenced by Findings of Fact No. 6, the Respondent failed to ensure that the design and construction of the RCS is certified by a licensed Texas professional engineer after its modification or repair, in violation of 30 TEX. ADMIN. CODE § 321.47(d)(3) and TCEQ Agreed Order, Docket No. 2008-0405-AGR-E, Ordering Provision No. 2.e.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of Six Thousand Six Hundred Dollars (\$6,600) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid One Hundred Sixty Dollars (\$160) of the administrative penalty. The remaining amount of Six Thousand Four Hundred Forty Dollars (\$6,440) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Eighty-Four Dollars (\$184) 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.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Six Thousand Six Hundred Dollars (\$6,600) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Salvador G. Gonzalez dba Gonzalez Dairy, Docket No. 2009-1604-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 Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, ensure the pond markers in all three RCSs are marked to show the volume for a 25-year, 24-hour rainfall event or a 100-year, 24-hour rainfall event, in accordance with 30 TEX. ADMIN. CODE § 321.47(e)(6);
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

- c. Within 90 days after the effective date of this Agreed Order, obtain certification by a licensed Texas professional engineer, signed and sealed in accordance with the requirements of the Texas State Board of Professional Engineers, that modifications to the construction and design of the RCS meet the current technical standards developed by the NRCS; and
 - d. Within 105 days after the effective date of this Agreed Order, submit written certification as described in 2.b above, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

Salvador G. Gonzalez dba Gonzalez Dairy
DOCKET NO. 2009-1004-AGR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

9/28/2010
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Salvador G. Gonzalez dba Gonzalez Dairy. I am authorized to agree to the attached Agreed Order on behalf of Salvador G. Gonzalez dba Gonzalez Dairy, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Salvador G. Gonzalez dba Gonzalez Dairy waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Salvador Gonzalez
Signature

12/29/2009
Date

Salvador G. Gonzalez
Name (Printed or typed)
Authorized Representative of
Salvador G. Gonzalez dba Gonzalez 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

