

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1140-AGR-E TCEQ ID: RN101527893 CASE NO.: 34194**  
**RESPONDENT NAME: NICK SUBLETT DBA UPHILL DAIRY**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

**SITE WHERE VIOLATIONS OCCURRED:** 910 East Farm-to-Market Road 219 near Hico, Hamilton County

**TYPE OF OPERATION:** Concentrated animal feeding operation (“CAFO”)

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints relating to this enforcement action. A complaint was received on November 3, 2009 (subsequent to settlement of this action), alleging an unauthorized discharge from the Facility to a neighboring property. A Notice of Enforcement was issued on January 8, 2010; no case number has been assigned.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired February 15, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Tom Jecha, Water Enforcement Section, MC 128, (512) 239-2576

**TCEQ Regional Contact:** Mr. Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5901

**Respondent:** Mr. Nick Sublett, Owner, Uphill Dairy, 910 East Farm-to-Market Road 219, Hico, Texas 76457

**Respondent's Attorney:** Ms. Courtney E. Cox, Jackson Walker LLP, 100 Congress Avenue, Suite 1100, Austin, Texas, 78701

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 6, 2007</p> <p><b>Date of NOE Relating to this Case:</b> June 28, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed on December 4, 2007. The EDFARP was filed on March 24, 2008. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and the parties engaged in discovery. Settlement was achieved and the agreed order was signed on October 20, 2009.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements.</p> <p><b>AGR:</b> Failed to obtain authorization under an individual water quality permit for a CAFO where any part of the production area or land management units ("LMU") are located in a watershed of a segment listed on the current United States Environmental Protection Agency ("EPA") approved 303(d) list of impaired water bodies and where a total maximum daily load ("TMDL") implementation plan has been adopted [30 TEX. ADMIN. CODE § 321.33(b)(4)].</p>	<p><b>Total Assessed:</b> \$ 1,010</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$210/\$800</p> <p>The Respondent paid \$210 of the administrative penalty. The remaining amount of \$800 shall be payable in 8 monthly payments of \$100 each.</p> <p><b>Site Compliance History Classification:</b> Not rated</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on August 17, 2009, Respondent obtained authorization to operate the Facility under an individual CAFO water quality permit – Texas Pollutant Discharge Elimination System ("TPDES") permit No. WQ0004858000.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	2-Jul-2007			
	<b>PCW</b>	15-Oct-2007	<b>Screening</b>	5-Jul-2007	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Nick Sublett dba Uphill Dairy				
<b>Reg. Ent. Ref. No.</b>	RN101527893				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	34194	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2007-1140-AGR-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Thomas Jecha		
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 3		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	1% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$10
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Notes: The penalty is enhanced for one prior NOV with dissimilar violations and reduced for one notice of intent to conduct a self-audit.

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

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	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.

<b>Total EB Amounts</b>	\$666	<b>0% Enhancement*</b>	<b>Subtotal 6</b>	\$0
<b>Approx. Cost of Compliance</b>	\$12,000	<i>*Capped at the Total EB \$ Amount</i>		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,010
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<b>Final Penalty Amount</b>	\$1,010
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,010
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement

<b>PAYABLE PENALTY</b>	\$1,010
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Screening Date 5-Jul-2007

Docket No. 2007-1140-AGR-E

PCW

Respondent Nick Sublett dba Uphill Dairy

Policy Revision 2 (September 2002)

Case ID No. 34194

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN101527893

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	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)	1	-1%
	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%
<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) 1%

#### >> 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

The penalty is enhanced for one prior NOV with dissimilar violations and reduced for one notice of intent to conduct a self-audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 1%

**Screening Date** 5-Jul-2007  
**Respondent** Nick Sublett dba Uphill Dairy  
**Case ID No.** 34194  
**Reg. Ent. Reference No.** RN101527893  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Thomas Jecha

**Docket No.** 2007-1140-AGR-E

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision May 25, 2007*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to obtain authorization under an individual water quality permit for a concentrated animal feeding operation ("CAFO") where any part of the production area or land management units ("LMU") are located in a watershed of a segment listed on the current United States Environmental Protection Agency approved 303(d) list of impaired water bodies and where a total maximum daily load ("TMDL") implementation plan has been adopted. Specifically, Uphill Dairy is currently authorized under a CAFO general permit. During the June 6, 2007 investigation, it was determined that part of the facility's production area and LMUs are located within the watershed that drains to Segment 1226 of the North Bosque River, which is currently listed on the 303(d) list of impaired waters and has a TMDL implementation plan in effect, which requires the facility to operate under a CAFO individual permit.

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Nick Sublett dba Uphill Dairy  
**Case ID No.** 34194  
**Reg. Ent. Reference No.** RN101527893  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$12,000	6-Jun-2007	15-Jul-2008	1.1	\$666	n/a	\$666
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a technically complete permit application. Associated expenses include application fee, site survey, and engineering certifications. Date Required is the investigation date. Final Date is the expected date that authorization will be obtained.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$12,000

**TOTAL** \$666

# Compliance History

Customer/Respondent/Owner-Operator: CN601616592 Nick Sublett Classification: AVERAGE Rating: 2.00  
Regulated Entity: RN101527893 UPHILL DAIRY Classification: Site Rating:  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920674  
Location: 910 E FM 219, HAMILTON CO, TX, 76457  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: July 13, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 13, 2002 to July 13, 2007

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

Name: Thomas Jecha Phone: 512 239 2576

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Nick Sublett
4. If Yes, who was/were the prior owner(s)? Finnerty Kevin and Volleman Carl
5. When did the change(s) in ownership occur? 11/9/2005

### 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 | 08/22/2002 | (1005)   |
| 2 | 06/18/2003 | (38101)  |
| 3 | 05/26/2004 | (271981) |
| 4 | 07/27/2005 | (401977) |
| 5 | 08/14/2006 | (484201) |
| 6 | 06/28/2007 | (563219) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                       |
|--------------|--|-----------------------|
| Date:        | 08/11/2006   | (484201)              |
| Self Report? | NO   | Classification: Minor |
| Citation:    | 30 TAC Chapter 321, SubChapter B 321.34(b)(3)  |                       |
| Description: | Failure of the permittee to notify the appropriate TCEQ regional office at least 48 hours prior to any change in the number or configuration of LMUs. TXG920000 Part IV.B(2)(b)                            |                       |
| Self Report? | NO   | Classification: Minor |
| Citation:    | 30 TAC Chapter 321, SubChapter B 321.34(f)(3)(A)(i)  |                       |
| Description: | Failure of the recharge feature documentation to include proof of an on-site inspection and review of all pertinent records and maps to locate any artificial recharge features. TXG920000 Part III.A.3(B) |                       |
- F. Environmental audits.
- |                        |            |          |
|------------------------|------------|----------|
| Notice of Intent Date: | 09/05/2003 | (251762) |
| No DOV Associated      |            |          |
- 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  
NICK SUBLETT DBA UPHILL  
DAIRY, RN101527893**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-1140-AGR-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Nick Sublett dba Uphill Dairy (the “Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Courtney E. Cox of the law firm of Jackson Walker, L.L.P., appear before the Commission and together stipulate that:

1. Respondent owns and operates a concentrated animal feeding operation (“CAFO”) located at 910 East Farm-to-Market Road 219, near Hico, Hamilton County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. Respondent received notice of the violations alleged in Section II (“Allegations”) on or about July 3, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
6. An administrative penalty in the amount of one thousand ten dollars (\$1,010.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”).

Respondent paid two hundred ten dollars (\$210.00) of the administrative penalty. The remaining amount of eight hundred dollars (\$800.00) of the administrative penalty shall be payable in 8 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of 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 Respondent agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on August 17, 2009, Respondent obtained authorization to operate the Facility under an individual CAFO water quality permit – Texas Pollutant Discharge Elimination System (“TPDES”) permit No. WQ0004858000.
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 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

During an inspection conducted on June 6, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 321.33(b)(4) by failing to obtain authorization under an individual water quality permit for a CAFO where any part of the production area or land management units (“LMU”) are located in a

watershed of a segment listed on the current United States Environmental Protection Agency (“EPA”) approved 303(d) list of impaired water bodies and where a total maximum daily load (“TMDL”) implementation plan has been adopted. Specifically, the Facility is currently authorized under a CAFO general permit. During the June 6, 2007 investigation it was determined that part of the Facility’s production area and LMUs are located within the watershed that drains to segment 1226 of the North Bosque River, which is currently listed on the EPA 303(d) list of impaired waters and has a TMDL implementation plan in effect, which requires the Facility to operate under a CAFO individual permit.

### III. DENIALS

Respondent generally denies the allegation in Section II (“Allegations”).

### IV. ORDERING PROVISIONS

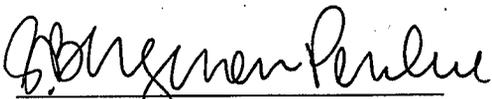
1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Respondent’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Nick Sublett dba Uphill Dairy, Docket No. 2007-1140-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 Respondent. 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. This Agreed Order, issued by the Commission, shall not be admissible against 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.

4. 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.
  
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Respondent, or three days after the date on which the Commission mails notice of the Order to 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

  
\_\_\_\_\_  
For the Executive Director

1/19/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Respondent's compliance history;
- Greater scrutiny of any permit applications submitted by Respondent;
- 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 against Respondent;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Respondent; and
- TCEQ seeking other relief as authorized by law.

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

  
Signature

10-20-09  
Date

Nick Sublett  
Name (Printed or typed)  
Authorized representative of  
Nick Sublett dba Uphill Dairy

Owner  
Title