

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0130-AGR-E **TCEQ ID:** RN102754678 and RN102343985 **CASE NO.:** 39045

**RESPONDENT NAME:** Fabian Almeida dba Odowd Dairy and Almeida Dairy Farm

<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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Odowd Dairy, 9112 County Road 913, Godley, Johnson County and Almeida Dairy Farm, 5620 Woodard Avenue, Cleburne, Johnson County</p> <p><b>TYPE OF OPERATION:</b> Confined animal feeding operations ("CAFOs")</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding these facility locations.</p> <p><b>INTERESTED PARTIES:</b> No one other than the BD and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 14, 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. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Fabian Almeida, Owner/Operator, Odowd Dairy and Almeida Dairy Farm, 5620 Woodard Avenue, Cleburne, Texas 76033  <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 type="checkbox"/> Complaint  <input checked="" 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>                      None</p> <p><b>Date of Investigation Relating to this Case:</b>                      November 19, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> January 22, 2010 (NOE)</p> <p><b>Background Facts:</b> These were routine investigations.</p> <p><b>WATER</b></p> <p>1) Failure to discontinue applying any manure, sludge, or wastewater to the land management unit ("LMU") except in accordance with a detailed nutrient utilization plan ("NUP") when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million ("ppm") in Zone 1 for a particular LMU. Specifically, soil analysis results dated November 4, 2009 for Site No. 1 showed that LMU 1 had an extractable phosphorus level of 223 ppm and a NUP had not been submitted for approval [General Permit No. TXG920500, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 TEX. ADMIN. CODE § 321.40(k)(2)].</p> <p>2) Failure to discontinue applying any manure, sludge, or wastewater to the LMU except in accordance with a detailed NUP when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 ppm in Zone 1 for a particular LMU. Specifically, soil analysis results dated November 4, 2009 for Site No. 2 showed that LMU 2 had an extractable phosphorus level of 220 ppm and a NUP had not been submitted for approval [General Permit No. TXG920055, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 TEX. ADMIN. CODE § 321.40(k)(2)].</p>	<p><b>Total Assessed:</b> \$2,080</p> <p><b>Total Deferred:</b> \$416  <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> \$1,664                      RN102343985 and RN102754678</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 Respondent has implemented the following corrective measures at the Sites:</p> <p>a. Discontinued applying wastewater by November 13, 2009 at Site No 1;</p> <p>b. Discontinued applying wastewater by November 18, 2009 at Site No 2; and</p> <p>c. Submitted a NUP for approval by January 28, 2010 for each Site.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NUP applications for the Sites within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>b. Within 90 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>

Additional ID No(s): TXG920500, TXG920055



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	25-Jan-2010	<b>Screening</b>	25-Jan-2010	<b>EPA Due</b>	
	PCW	26-Jan-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Fabian Almeida dba Odowd Dairy (Site 1)		
<b>Reg. Ent. Ref. No.</b>	RN102754678		
<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>	39045	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0130-AGR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

<b>Penalty Calculation Section</b>			
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		<b>Subtotal 1</b>	\$1,000
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
<b>Compliance History</b>	4.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$40
<b>Notes</b>	The Respondent was issued two NOVs without the same/similar type of violations.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
<b>Notes</b>	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement* <small>*Capped at the Total EB \$ Amount</small>	<b>Subtotal 6</b>	\$0
<small>Total EB Amounts</small>	\$74		
<small>Approx. Cost of Compliance</small>	\$2,000		
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	\$1,040
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
<b>Notes</b>			
		<b>Final Penalty Amount</b>	\$1,040
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>	\$1,040
<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$208
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
<b>Notes</b>	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>			\$832

**Screening Date** 25-Jan-2010

**Docket No.** 2010-0130-AGR-E

**PCW**

**Respondent** Fabian Almelda dba Odowd Dairy (Site 1)

Policy Revision 2 (September 2002)

**Case ID No.** 39045

PCW Revision October 30, 2009

**Reg. Ent. Reference No.** RN102754678

**Media [Statute]** Water Quality

**Enf. Coordinator** Jorge Ibarra, P.E.

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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%
<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)** 4%

>> **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 Respondent was issued two NOVs without the same/similar type of violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 4%

<b>Screening Date</b> 25-Jan-2010	<b>Docket No.</b> 2010-0130-AGR-E														
<b>Respondent</b> Fabian Almeida dba Odowd Dairy (Site 1)	<small>PCW</small> <small>Policy Revision 2 (September 2002)</small>														
<b>Case ID No.</b> 39045	<small>PCW Revision October 30, 2008</small>														
<b>Reg. Ent. Reference No.</b> RN102754678															
<b>Media [Statute]</b> Water Quality															
<b>Enf. Coordinator</b> Jorge Ibarra, P.E.															
<b>Violation Number</b> 1															
<b>Rule Cite(s)</b>	General Permit No. TXG920500, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 Tex. Admin. Code § 321.40(k)(2)														
<b>Violation Description</b>	Failed to discontinue applying any manure, sludge, or wastewater to the land management unit ("LMU") except in accordance with a detailed nutrient utilization plan ("NUP") when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million ("ppm") in Zone 1 for a particular LMU. Specifically, soil analysis results dated November 4, 2009 showed that LMU 1 had an extractable phosphorus level of 223 ppm and a NUP had not been submitted for approval.														
<b>Base Penalty</b>	\$10,000														
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>															
<b>Harm</b>															
Release	Major      Moderate      Minor														
Actual	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>														
Potential	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>														
<b>Percent</b>	10%														
<b>&gt;&gt; Programmatic Matrix</b>															
<b>Falsification</b>															
Major      Moderate      Minor															
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>															
<b>Percent</b>	0%														
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environment receptors as a result of the violation.														
<b>Adjustment</b>	\$9,000														
<b>Subtotal</b>	\$1,000														
<b>Violation Events</b>															
<b>Number of Violation Events</b>	1														
<b>Number of violation days</b>	14														
<i>mark only one with an x</i>	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="checkbox"/></td></tr> <tr><td>weekly</td><td><input type="checkbox"/></td></tr> <tr><td>monthly</td><td><input type="checkbox"/></td></tr> <tr><td>quarterly</td><td><input checked="" type="checkbox"/></td></tr> <tr><td>semiannual</td><td><input type="checkbox"/></td></tr> <tr><td>annual</td><td><input type="checkbox"/></td></tr> <tr><td>single event</td><td><input type="checkbox"/></td></tr> </table>	daily	<input type="checkbox"/>	weekly	<input type="checkbox"/>	monthly	<input type="checkbox"/>	quarterly	<input checked="" type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input type="checkbox"/>
daily	<input type="checkbox"/>														
weekly	<input type="checkbox"/>														
monthly	<input type="checkbox"/>														
quarterly	<input checked="" type="checkbox"/>														
semiannual	<input type="checkbox"/>														
annual	<input type="checkbox"/>														
single event	<input type="checkbox"/>														
<b>Violation Base Penalty</b>	\$1,000														
One quarterly event is recommended. The penalty was calculated based on the days wastewater was applied to LMU 1 from the date of the soil analysis report dated November 4, 2009 to the date wastewater was last applied to LMU 1, November 13, 2009.															
<b>Good Faith Efforts to Comply</b>	0.0% Reduction														
	Before NOV      NOV to EDPRP/Settlement Offer														
Extraordinary	<input type="checkbox"/> <input type="checkbox"/>														
Ordinary	<input type="checkbox"/> <input type="checkbox"/>														
N/A	<input checked="" type="checkbox"/> (mark with x)														
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.														
<b>Violation Subtotal</b>	\$1,000														
<b>Economic Benefit (EB) for this violation</b>															
<b>Estimated EB Amount</b>	\$74														
<b>Statutory Limit Test</b>															
<b>Violation Final Penalty Total</b>	\$1,040														
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$1,040														

## Economic Benefit Worksheet

**Respondent** Fablan Almeida dba Odowd Dairy (Site 1)  
**Case ID No.** 39045  
**Reg. Ent. Reference No.** RN102754678  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	4-Nov-2009	1-Aug-2010	0.74	\$74	n/a	\$74
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a NUP for approval. Date Required is the date exceedance of 200 ppm phosphorous was documented, Final Date is the expected compliance date.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

**TOTAL**

\$74

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601235237 ALMEIDA, FABIAN Classification: AVERAGE Rating: 1.53  
Regulated Entity: RN102754678 ODOWD DAIRY Classification: AVERAGE Site Rating: 1.63  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920500  
Location: 9112 COUNTY ROAD 913, GODLEY, TX, 76044  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: January 25, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 25, 2005 to January 25, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## 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	08/11/2005	(403835)
2	08/30/2006	(488964)
3	01/03/2007	(533818)
4	08/27/2007	(573240)
5	04/30/2008	(640576)
6	11/20/2008	(707448)
7	04/23/2009	(742829)
8	01/21/2010	(781632)

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

Date: 08/25/2008 (488964) CN601235237  
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.34(f)(3)  
III.A.3 PERMIT

Description: Failure to provide a recharge feature certification, sealed by a Texas PE or Licensed Texas geoscientist which documents the presence or absence of recharge features on any tracts of land owned, operated, controlled, rented, or leased by the applicant and to be used as a part of a CAFO or land management units.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(e)  
III.A.8(c) PERMIT

Description: Failure to provide containment structures for contaminated runoff from manure/litter or  
sludge storage piles.

Date: 11/21/2008 (707448) CN601235237

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
Part V.D. OP

Description: Failure to contain open lots.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.46(c)(1)  
Part III.A.15.(b) OP

Description: Failure to conduct a five year site evaluation.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.36(d)(2)  
Part III.A.11.(a) OP

Description: Failure to maintain and update the Nutrient Management Plan (NMP).

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	25-Jan-2010	Screening	25-Jan-2010	EPA Due	
	PCW	26-Jan-2010				

**RESPONDENT/FACILITY INFORMATION**

Respondent	Fabian Almeida dba Almeida Dairy Farm (Site 2)		
Reg. Ent. Ref. No.	RN102343985		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	39045	No. of Violations	1
Docket No.	2010-0130-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$1,000

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 4.0% Enhancement Subtotals 2, 3, & 7 \$40

Notes: The Respondent was issued two NOVs without the same/similar type of violations.

**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 \$0

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

Total EB Amounts	\$74	<i>*Capped at the Total EB \$ Amount</i>
Approx. Cost of Compliance	\$2,000	

**SUM OF SUBTOTALS 1-7** Final Subtotal \$1,040

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes: [Empty box]

**Final Penalty Amount** \$1,040

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$1,040

**DEFERRAL** 20.0% Reduction Adjustment -\$208

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$832

**Screening Date** 25-Jan-2010

**Docket No.** 2010-0130-AGR-E

**PCW**

**Respondent** Fabian Almeida dba Almeida Dairy Farm (Site 2)

*Policy Revision 2 (September 2002)*

**Case ID No.** 39045

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102343985

**Media [Statute]** Water Quality

**Enf. Coordinator** Jorge Ibarra, P.E.

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent was issued two NOVs without the same/similar type of violations.

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

<b>Screening Date</b> 25-Jan-2010	<b>Docket No.</b> 2010-0130-AGR-E	<b>PCW</b>	
<b>Respondent</b> Fabian Almeida dba Almeida Dairy Farm (Site 2)	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 39045	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN102343985			
<b>Media [Statute]</b> Water Quality			
<b>Enf. Coordinator</b> Jorge Ibarra, P.E.			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	General Permit No. TXG920055, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 Tex. Admin. Code § 321.40(k)(2)		
<b>Violation Description</b>	Failed to discontinue applying any manure, sludge, or wastewater to the land management unit ("LMU") except in accordance with a detailed nutrient utilization plan ("NUP") when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million ("ppm") in Zone 1 for a particular LMU. Specifically, soil analysis results dated November 4, 2009 showed that LMU 2 had an extractable phosphorus level of 220 ppm and a NUP had not been submitted for approval.		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
Harm			
<b>Release</b>	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>		<input type="text" value="10%"/>	
<b>&gt;&gt; Programmatic Matrix</b>			
Falsification			
Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Percent</b>		<input type="text" value="0%"/>	
<b>Matrix Notes</b>	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environment receptors as a result of the violation.		
<b>Adjustment</b>		<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
<b>Violation Events</b>			
<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="14"/>	<b>Number of violation days</b>
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
single event	<input type="text"/>		
One quarterly event is recommended. The penalty was calculated based on the days wastewater was applied to LMU 2 from the date of the soil analysis report dated November 4, 2009 to the date wastewater was last applied to LMU 2, November 18, 2009.			
<b>Good Faith Efforts to Comply</b>			<input type="text" value="0.0% Reduction"/>
			<input type="text" value="\$0"/>
Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>		<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<input type="text" value="\$74"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$1,040"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,040"/>	

## Economic Benefit Worksheet

**Respondent** Fabian Almeida dba Almeida Dairy Farm (Site 2)  
**Case ID No.** 39045  
**Reg. Ent. Reference No.** RN102343985  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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	\$2,000	4-Nov-2009	1-Aug-2010	0.74	\$74	n/a	\$74
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a NUP for approval. Date Required is the date exceedance of 200 ppm phosphorous was documented, Final Date is the expected compliance date.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,000

TOTAL \$74

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601235237 ALMEIDA, FABIAN	Classification: AVERAGE	Rating: 1.53
Regulated Entity:	RN102343985 ALMEIDA DAIRY FARM	Classification: AVERAGE	Site Rating: 1.43
ID Number(s):	WASTEWATER AGRICULTURE PERMIT		TXG920055
Location:	5620 WOODARD AVE, CLEBURNE, TX, 76033		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 25, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 25, 2005 to January 25, 2010		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890

## 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 omissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

1	08/15/2005	(405025)
2	05/23/2006	(462184)
3	05/30/2007	(561928)
4	04/30/2008	(640575)
5	11/20/2008	(707446)
6	04/23/2009	(742592)
7	01/21/2010	(781633)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/26/2006	(462184)	CN601235237
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 321, SubChapter B 321.39(g)(2)	
III.B.5 PERMIT		
Description:	Failure to maintain crops during the normal growing season in areas where animals are concentrated with no runoff control structures.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 321, SubChapter B 321.45(b)(2)	
III.C.2(b) PERMIT		

Description: Failure to attend and complete at least eight hours additional hours of continuing animal waste management education or its equivalent developed by the executive director and the Texas Cooperative Extension for each two-year period after completing the requirements for subsection (2)(a) of this Part.

Date: 11/21/2008 (707446) CN601235237  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(g)(2)  
Part III.B.5. OP  
Description: Failure to maintain vegetation in pastures.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(7)(D)  
Part III.A.6.(c)(1) OP  
Description: Failure to minimize the entry of uncontaminated precipitation runoff into the RCS.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.46(c)(1)  
Part III.A.15(b) OP  
Description: Failure to conduct a five year site evaluation.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.36(d)(2)  
Part III.A.11(a) OP  
Description: Failure to maintain and update the Nutrient Management Plan (NMP).

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**

**FABIAN ALMEIDA DBA ODOWD  
DAIRY AND ALMEIDA DAIRY FARM  
RN102754678 AND RN102343985**

§  
§  
§  
§  
§  
§

**BEFORE THE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2010-0130-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 Fabian Almeida dba Odowd Dairy and Almeida Dairy Farm ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates confined animal feeding operations ("CAFO") at the following locations ("the Sites"):
  - a. Odowd Dairy: 9112 County Road 913 in Godley, Johnson County, Texas ("Site No. 1");
  - b. Almeida Dairy Farm: 5620 Woodard Avenue in Cleburne, Johnson County, Texas ("Site No. 2").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about January 27, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Eighty Dollars (\$2,080) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Six Hundred Sixty-Four Dollars (\$1,664) of the administrative penalty and Four Hundred Sixteen Dollars (\$416) is deferred contingent upon the Respondent's 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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Sites:
  - a. Discontinued applying wastewater by November 13, 2009 at Site No 1;
  - b. Discontinued applying wastewater by November 18, 2009 at Site No 2; and
  - c. Submitted a nutrient utilization plan ("NUP") for approval by January 28, 2010 for each Site.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Sites, the Respondent is alleged to have:

1. Failed to discontinue applying any manure, sludge, or wastewater to the land management unit ("LMU") except in accordance with a detailed NUP when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 ppm in Zone 1 for a particular LMU, in violation of General Permit No. TXG920500, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 TEX. ADMIN. CODE § 321.40(k)(2), as documented during an investigation conducted on November 19, 2009. Specifically, soil analysis results dated

November 4, 2009 for Site No. 1 showed that LMU 1 had an extractable phosphorus level of 223 parts per million ("ppm") and a NUP had not been submitted for approval.

2. Failed to discontinue applying any manure, sludge, or wastewater to the LMU except in accordance with a detailed NUP when results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 ppm in Zone 1 for a particular LMU, in violation of General Permit No. TXG920055, Part III.A.11(c)(1) and 13(a)(1), Pollution Prevention Plan Requirements, and 30 TEX. ADMIN. CODE § 321.40(k)(2), as documented during an investigation conducted on November 19, 2009. Specifically, soil analysis results dated November 4, 2009 for Site No. 2 showed that LMU 2 had an extractable phosphorus level of 220 ppm and a NUP had not been submitted for approval.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Fabian Almeida dba Odowd Dairy and Almeida Dairy Farm, Docket No. 2010-0130-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the NUP applications for the Sites within 30 days after the date of such requests or by any other deadline specified in writing; and
  - b. Within 90 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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 Sites 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. 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

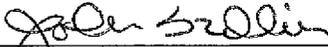
Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

5/14/2010  
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.

  
\_\_\_\_\_  
Signature

03/31/10  
Date

FABIAN ALMEIDA  
Name (Printed or typed)  
Authorized Representative of  
Fabian Almeida dba Odowd Dairy and Almeida Dairy Farm

OWNER / 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.