

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1741-AGR-E TCEQ ID RN105006829 CASE NO. 35820**  
**RESPONDENT NAME: DAVID MONTANEZ DBA DAVID MONTANEZ CALF FARM**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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:** 3850 County Road 382, Carlton, Erath County

**TYPE OF OPERATION:** calf raising operation

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**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 June 21, 2010.. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-3400  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Sam Short, Water Enforcement Section, MC 219; (512) 239-5363

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

**Respondent:** Mr. David Montanez, Owner, David Montanez Calf Farm, 3850 County Road 382, Carlton, Texas 76436

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS REQUIRED
<p><b>Type of Investigation:</b></p> <p>___ Complaint                      ___ Routine  <input checked="" type="checkbox"/> Enforcement Follow-up                      ___ 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>                      August 11, 2009</p> <p><b>Date of NOE Relating to this Case:</b>                      October 9, 2009</p> <p><b>Background Facts:</b>                      The EDPRP was filed on March 22, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on March 24, 2010. Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>AGR:</b></p> <ol style="list-style-type: none"> <li>Failed to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures ("RCS") are in accordance with the technical standards developed by the Natural Resource Conservation Service ("NRCS") [30 TEX. ADMIN CODE § 321.47(d)(3) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.d.].</li> <li>Failed to obtain authorization to expand an existing animal feeding operation ("AFO") through an individual permit or a concentrated animal feeding operation ("CAFO") general permit [30 TEX. ADMIN. CODE § 321.33(d) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.a.].</li> </ol>	<p><b>Total Assessed:</b> \$11,250</p> <p><b>Total Deferred:</b> \$0</p> <p>___ Expedited Order                      ___ Financial Inability to Pay                      ___ SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$11,250</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>                      ___ High <input checked="" type="checkbox"/> Average ___ Poor</p> <p><b>Person Compliance History Classification:</b>                      ___ High <input checked="" type="checkbox"/> Average ___ Poor</p> <p><b>Major Source:</b> ___ Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days:                             <ol style="list-style-type: none"> <li>Either reduce the cattle numbers to meet AFO requirements or submit an administratively complete water quality permit application.</li> <li>If submitting a water quality permit application, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other date specified in writing.</li> </ol> </li> <li>Within 45 days, submit written certification of compliance with Ordering Provision No. 1.a.</li> <li>Within 60 days, obtain written certification from a licensed Texas professional engineer for any RCS being used at the Facility;</li> <li>Within 75 days, submit written certification of compliance with Ordering Provision No. 3.</li> <li>If submitting a water quality permit application, within 180 days submit written certification that either the authorization to operate a CAFO has been obtained or that the number of cattle has been reduced to meet AFO requirements.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	12-Oct-2009	<b>Screening</b>	26-Oct-2009	<b>EPA Due</b>	
	<b>PCW</b>	3-Nov-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	David Montanez dba David Montanez Calf Farm		
<b>Reg. Ent. Ref. No.</b>	RN105006829		
<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>	35820	<b>No. of Violations</b>	2	
<b>Docket No.</b>	2009-1741-AGR-E	<b>Order Type</b>	Findings	
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Samuel Short	
		<b>EC's Team</b>	Enforcement Team 3	
<b>Admin. Penalty \$ Limit</b>	<b>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>	\$9,000
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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>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,250
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Notes: Enhancement recommended for having one NOV for the same or similar violations and one Agreed Order with denial language within the last five years.

<b>Culpability</b>	No	0.0% 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 Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$999  
 Approx. Cost of Compliance: \$12,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$11,250

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$11,250
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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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.

<b>PAYABLE PENALTY</b>	\$11,250
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**Screening Date** 26-Oct-2009

**Docket No.** 2009-1741-AGR-E

**PCW**

**Respondent** David Montanez dba David Montanez Calf Farm

Policy Revision 2 (September 2002)

**Case ID No.** 35820

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105006829

**Media [Statute]** Water Quality

**Enf. Coordinator** Samuel Short

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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)** 25%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement recommended for having one NOV for the same or similar violations and one Agreed Order with denial language within the last five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

<b>Screening Date</b>	26-Oct-2009	<b>Docket No.</b>	2009-1741-AGR-E	<b>PCW</b>
<b>Respondent</b>	David Montanez dba David Montanez Calf Farm			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	35820			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105006829			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Samuel Short			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 321.47(d)(3) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.d.			
<b>Violation Description</b>	Failed to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures ("RCS") are in accordance with the technical standards developed by the Natural Resources Conservation Service. Specifically, the Respondent could not provide certification for the large excavation that was being used to store wastewater generated from the operation.			
		<b>Base Penalty</b>	\$10,000	

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

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
		x			<b>Percent</b> 10%
<b>Matrix Notes</b>	100% of the rule requirement was not met.				
					<b>Adjustment</b> \$9,000

\$1,000

**Violation Events**

Number of Violation Events	1	217	Number of violation days
<i>mark only one with an x</i>	daily		<b>Violation Base Penalty</b> \$1,000
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
	One single event is recommended.		

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
	<b>Violation Subtotal</b>	\$1,000

**Economic Benefit (EB) for this violation**      **Statutory Limit Test**

<b>Estimated EB Amount</b>	\$191	<b>Violation Final Penalty Total</b>	\$1,250
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$1,250

## Economic Benefit Worksheet

**Respondent** David Montanez dba David Montanez Calf Farm  
**Case ID No.** 35820  
**Reg. Ent. Reference No.** RN105006829  
**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	\$2,000	23-Mar-2009	3-Aug-2010	1.36	\$9	\$182	\$191
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to contract a licensed Texas professional engineer to certify the design of a properly constructed RCS. Date required is the effective date of Agreed Order Docket No. 2008-0732-AGR-E. Final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

**TOTAL**

\$191

<b>Screening Date</b>	26-Oct-2009	<b>Docket No.</b>	2009-1741-AGR-E	<b>PCW</b>
<b>Respondent</b>	David Montanez dba David Montanez Calf Farm			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	35820			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105006829			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Samuel Short			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 321.33(d) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.a.			
<b>Violation Description</b>	Failed to obtain authorization to expand an existing animal feeding operation through an individual water quality permit or concentrated animal feeding operation ("CAFO") general permit prior to meeting the definition of a CAFO. Specifically, it was determined that the Facility meets the definition of a medium CAFO because approximately 800 calves were on site during the investigation.			
		<b>Base Penalty</b>	\$10,000	

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

OR		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
		x			<b>Percent</b> 10%
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$8,000

Eight monthly events are recommended from the effective date of Agreed Order Docket No. 2008-0732-AGR-E, March 23, 2009, to the date of screening, October 26, 2009.

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/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** \$8,000

**Economic Benefit (EB) for this violation**  **Statutory Limit Test**

**Estimated EB Amount** \$808 **Violation Final Penalty Total** \$10,000

**This violation Final Assessed Penalty (adjusted for limits)** \$10,000

## Economic Benefit Worksheet

**Respondent** David Montanez dba David Montanez Calf Farm  
**Case ID No.** 35820  
**Reg. Ent. Reference No.** RN105006829  
**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	\$10,000	23-Mar-2009	3-Nov-2010	1.62	\$808	n/a	\$808
Other (as needed)				0.00	\$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 effective date of Agreed Order Docket No. 2008-0732-AGR-E. Final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$808

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603069691 MONTANEZ, DAVID Classification: AVERAGE Rating: 31.00  
Regulated Entity: RN105006829 DAVID MONTANEZ CALF FARM Classification: AVERAGE Site Rating: 31.00  
ID Number(s):  
Location: 3850 COUNTY ROAD 382, CARLTON, TX, 76436  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: October 23, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: October 23, 2004 to October 23, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Samuel Short Phone: (512) 239-5363

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

**Effective Date: 03/23/2009**

**ADMINORDER 2008-0732-AGR-E**

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(d)(3)

Description: Failure to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures are in accordance with the technical standards developed by the NRCS.

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(d)

Description: Failure to obtain an individual or general permit prior to altering an existing AFO such that it becomes defined as a CAFO.

- 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 08/30/2006 (510330)

N/A

2 08/25/2009 (766947)

3 10/09/2009 (778490)

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

**Date: 08/25/2006 (510330)**

Self Report? NO

Classification: Moderate

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

Description: Failure to locate, construct, and manage control facilities in a manner that would protect surface and groundwater quality.

- 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



<b>IN THE MATTER OF AN</b>	§	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	§	
<b>CONCERNING</b>	§	<b>TEXAS COMMISSION ON</b>
<b>DAVID MONTANEZ DBA DAVID</b>	§	
<b>MONTANEZ CALF FARM;</b>	§	<b>ENVIRONMENTAL QUALITY</b>
<b>RN105006829</b>	§	

**DEFAULT ORDER**  
**DOCKET NO. 2009-1741-AGR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is David Montanez dba David Montanez Calf Farm (“Mr. Montanez”).

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

**FINDINGS OF FACT**

1. Mr. Montanez owns and operates a calf raising operation located at 3850 County Road 382, in Carlton, Erath County, Texas (the “Facility”).
2. Mr. Montanez has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation conducted on August 11, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Montanez:
  - a. Failed to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures (“RCS”) are in accordance with the technical standards developed by the Natural Resource Conservation Service (“NRCS”); and
  - b. Failed to obtain authorization to expand an existing animal feeding operation (“AFO”) through an individual water quality permit or through a concentrated animal feeding operation (“CAFO”) general permit. Specifically, the investigator documented approximately 800 head of cattle at the Facility, which is above the authorized number of 299 head for an AFO.

4. Mr. Montanez received notice of the violations on or about October 14, 2009.
5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Montanez dba David Montanez Calf Farm” (the “EDPRP”) in the TCEQ Chief Clerk’s office on March 22, 2010.
6. By letter dated March 22, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Montanez with notice of the EDPRP. According to the return receipt “green card,” Mr. Montanez received notice of the EDPRP on March 24, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Montanez received notice of the EDPRP, provided by the Executive Director. Mr. Montanez failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1 and 2, Mr. Montanez 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 Finding of Fact No. 3.a., Mr. Montanez failed to provide certification from a licensed Texas professional engineer that the design and construction of all RCS are in accordance with the technical standards developed by the NRCS, in violation of 30 TEX. ADMIN. CODE § 321.47(d)(3) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.d.
3. As evidenced by Finding of Fact No. 3.b., Mr. Montanez failed to obtain authorization to expand an existing AFO through an individual water quality permit or through a CAFO general permit, in violation of 30 TEX. ADMIN. CODE § 321.33(d) and TCEQ Agreed Order Docket No. 2008-0732-AGR-E, Ordering Provision 2.a.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Montanez with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. Montanez failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Montanez and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Montanez for violations of the Texas Water 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 eleven thousand two hundred fifty dollars (\$11,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

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

1. Mr. Montanez is assessed an administrative penalty in the amount of eleven thousand two hundred fifty dollars (\$11,250.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Montanez' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: David Montanez dba David Montanez Calf Farm ; Docket No. 2009-1741-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. Mr. Montanez shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Montanez shall:
    - i. Either reduce the cattle numbers to meet AFO requirements or submit an administratively complete water quality permit application pursuant to 30 TEX. ADMIN. CODE § 321.34 to:

Agriculture Core, Waste Water Permitting Section  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- ii. If submitting a water quality permit application, Mr. Montanez shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other date specified in writing.
- b. Within 45 days after the effective date of this Order, Mr. Montanez shall submit written certification of compliance with Order Provision No. 2.a.i., as described in Ordering Provision No. 2.f. below;
- c. Within 60 days after the effective date of this Order, Mr. Montanez shall obtain written certification from a licensed Texas professional engineer for any RCS being used at the Facility, in accordance with 30 TEX. ADMIN. CODE § 321.47(d)(3);
- d. Within 75 days after the effective date of this Order, Mr. Montanez shall submit written certification of compliance with Order Provision No. 2.c., as described in Ordering Provision No. 2.f. below;
- e. If submitting a water quality permit application, within 180 days after the effective date of this Order Mr. Montanez shall submit written certification as described in Ordering Provision No. 2.f. below, that either authorization to operate a CAFO has been obtained or that the number of cattle at the Facility has been reduced to meet AFO requirements; and
- f. The certifications required by Ordering Provision Nos. 2.b., 2.d., and 2.e. shall include detailed supporting documentation including photographs, receipts, and other records to demonstrate compliance with these Ordering Provisions. The certifications shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Montanez shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Mr. Sam Barrett, Water Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Montanez. Mr. Montanez is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Montanez fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Montanez' failure to comply is not a violation of this Order. Mr. Montanez shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Montanez shall notify the Executive Director within seven days after Mr. Montanez becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Montanez shall be made in writing to the Executive Director. Extensions are not effective until Mr. Montanez receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Mr. Montanez if the Executive Director determines that Mr. Montanez has not complied with one or more of the terms or conditions in this Order.

8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

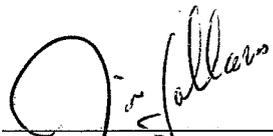
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of David Montanez dba David Montanez Calf Farm” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 22, 2010.

The EDPRP was mailed to Mr. Montanez at his last known address on March 22, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Montanez received notice of the EDPRP on March 24, 2010, as evidenced by the signature on the card.

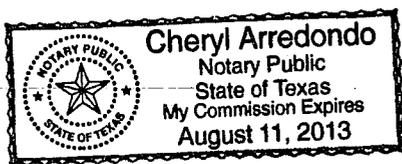
More than 20 days have elapsed since Mr. Montanez received notice of the EDPRP. Mr. Montanez failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



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Jim Sallans, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 28<sup>th</sup> day of April, A.D., 2010.



Cheryl Arredondo  
Notary Signature