

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-0507-AGR-E RN102754892 CASE NO. 34594**  
**RESPONDENT NAME: JOCHUM SHIEVINK DBA JOCHUM SHIEVINK DAIRY**

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

<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 VIOLATION(S) OCCURRED:** 3066 County Road 285, Dublin, Erath County

**TYPE OF OPERATION:** dairy/concentrated animal feeding 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 July 5, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Samuel Short, Air Enforcement Section, MC 219, (512) 239-5363

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

**Respondent:** Mr. Jochum Shievink, Owner, Jochum Shievink Dairy, 3066 County Road 285, Dublin, Texas 76446

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<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> February 4, 2009</p> <p><b>Date of NOE Relating to this Case:</b> March 8, 2009</p> <p><b>Background Facts:</b> The EDRP was filed on July 14, 2009. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on April 13, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>WQ:</b></p> <ol style="list-style-type: none"> <li>Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event [30 TEX. ADMIN. CODE §§ 305.125 and 321.36(c) and General Permit No. TXG920211, Part III.A.6.(d).].</li> <li>Failed to dewater the retention control structures ("RCS") and restore the rainfall capacity of the RCS [TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.c.].</li> <li>Failed to develop and implement procedures to ensure that discharges are reported to the appropriate Regional office within 24 hours of discharge or upon discovery, whichever occurs first [30 TEX. ADMIN. CODE § 321.44(a) and TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.a.].</li> <li>Failed to develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge [[30 TEX. ADMIN. CODE § 321.44(b), General Permit No. TXG920211, and TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.b.].</li> </ol>	<p><b>Total Assessed:</b> \$8,330</p> <p><b>Total Deferred:</b> \$0</p> <p><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> \$245/\$8,085</p> <p>Respondent paid \$245 of the administrative penalty. The remaining amount of \$8,085 shall be payable in 35 monthly payments of \$231 each.</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>Findings Order Justification:</b> Indifference to legal duty based on violation of a previous Agreed Order.</p>	<p><b>Corrective Action Taken:</b> The Executive Director recognizes that on February 18, 2009, Respondent properly disposed of the dead animals noted in Land Management Unit 3.</p> <p><b>Ordering Provisions:</b> Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 15 days:             <ol style="list-style-type: none"> <li>Develop and implement procedures to ensure that all future discharges are reported within 24 hours of discharge or upon discovery, whichever occurs first;</li> <li>Develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge; and</li> <li>Submit the complete sampling records for the December 15, 2008, soil samples.</li> </ol> </li> <li>Within 30 days, dewater the RCS and restore the rainfall capacity of the RCS.</li> <li>Within 60 days:             <ol style="list-style-type: none"> <li>Submit documentation that RCS Nos. 2 and 3 are properly designed, constructed, operated, and/or maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event, including but not limited to ensuring that RCS 2 and 3 have adequate capacity, are enlarged, and that the solids in RCS 2 are removed; and</li> <li>Re-establish and maintain vegetative cover in pastures that maintain animals.</li> </ol> </li> <li>Within 75 days, submit written certification demonstrating compliance.</li> </ol>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>5. Failed to have complete sampling records [30 TEX. ADMIN. CODE § 305.125(11), and General Permit No. TXG920211, Part V.I.2.].</p> <p>6. Failed to maintain vegetation, crops, forage growth, or post harvest residues in the normal growing season in pastures that maintain animals [30 TEX. ADMIN. CODE § 321.39(g)(2) and General Permit No. TXG920211, Part III.B.5.].</p> <p>7. Failed to properly dispose of dead animals [30 TEX. ADMIN. CODE § 321.36(1)].</p>		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	23-Mar-2009	<b>Screening</b>	9-Apr-2009	<b>EPA Due</b>	
	<b>PCW</b>	27-Apr-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Jochum Schievink dba Jochum Schievink Dairy
<b>Reg. Ent. Ref. No.</b>	RN102754892
<b>Facility/Site Region</b>	4-Stephenville
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34594	<b>No. of Violations</b>	7
<b>Docket No.</b>	2009-0507-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 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>	<b>\$6,600</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	30.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,980</b>
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Notes: Enhancement recommended for having two NOVs for the same or similar violations and one Agreed Order with denial within the last five years.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$250</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$515  
 Approx. Cost of Compliance: \$10,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$8,330</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$8,330</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$8,330</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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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>	<b>\$8,330</b>
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**Screening Date** 9-Apr-2009

**Docket No.** 2009-0507-AGR-E

**PCW**

**Respondent** Jochum Schievink dba Jochum Schievink Dairy

Policy Revision 2 (September 2002)

**Case ID No.** 34594

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102754892

**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> )	2	10%
	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)** 30%

>> **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 two NOV's for the same or similar violations and one Agreed Order with denial within the last five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code §§ 305.125 and 321.36(c) and General Permit No. TXG920211, Part III.A.6.(d)

**Violation Description**  
 Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event. Specifically, documentation submitted for a five year evaluation indicated that retention control structures ("RCS") 2 and 3 do not have adequate capacity and that solids in RCS 2 needed to be removed.

**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="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**  
 Human health or the environment will or could be exposed to significant amounts of pollutants.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

Two quarterly events (one for each RCS) are recommended from the investigation date, February 4, 2009, to the screening date, April 9, 2009.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes**  
 The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**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** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**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
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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	\$5,000	4-Feb-2009	30-Dec-2009	0.90	\$15	\$300	\$315
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	\$1,000	4-Feb-2009	30-Dec-2009	0.90	\$45	n/a	\$45
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 increase capacity for RCS 2 and 3 and the cost to remove the solids from RCS 2. The dates required are the investigation dates. The final dates are the expected dates 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

\$6,000

**TOTAL**

\$361

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number** 2  
**Rule Cite(s)** TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.c.  
**Violation Description** Failed to dewater the retention control structure ("RCS") and restore the rainfall capacity capacity of the RCS as required by Ordering Provision 2.c of TCEQ Docket No. 2007-1459-AGR-E.

**Base Penalty** \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Human health or the environment will or could be exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** \$9,500

\$500

**Violation Events**

Number of Violation Events 1 143 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

*mark only one with an x*

**Violation Base Penalty** \$500

One single event is recommended.

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

	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** \$500

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

**Estimated EB Amount** \$52 **Violation Final Penalty Total** \$650

**This violation Final Assessed Penalty (adjusted for limits)** \$650

## Economic Benefit Worksheet

**Respondent** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**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
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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				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	17-Nov-2008	30-Nov-2009	1.04	\$52	n/a	\$52

Notes for DELAYED costs

The estimated cost to dewater the RCS and restore the rainfall capacity of the RCS. The date required is the effective date of Agreed Order Docket No. 2007-1459-AGR-E and the final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$52

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 321.44(a), General Permit No. TXG920211, Part IV B.5., and TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.a.

**Violation Description** Failed failed to develop and implement procedures to ensure that discharges are reported to the appropriate regional office within 24 hours of discharge or upon discovery, whichever occurs first.

**Base Penalty** \$10,000

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

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

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	
	x			10%

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 143 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended.

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

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

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$5 **Violation Final Penalty Total** \$1,300

**This violation Final Assessed Penalty (adjusted for limits)** \$1,300

## Economic Benefit Worksheet

**Respondent** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**Media** Water Quality  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	17-Nov-2008	15-Nov-2009	0.99	\$5	n/a	\$5

Notes for DELAYED costs

The estimated cost to begin orally notifying the executive director and the appropriate regional office within 24 hours of a discharge from a CAFO. The date required is the effective date of Agreed Order Docket No. 2007-1459-AGR-E and the final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$5

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.44(b), General Permit No. TXG920211, Part III A.5.(c), and TCEQ Docket No. 2007-1459-AGR-E, Ordering Provision 2.b.  
**Violation Description** Failed to develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge.

**Base Penalty** \$10,000

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		x			
					10%

**Matrix Notes** 100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 143 Number of violation days

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

**Violation Base Penalty** \$1,000

One single event is recommended.

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

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

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$25 **Violation Final Penalty Total** \$1,300

**This violation Final Assessed Penalty (adjusted for limits)** \$1,300

## Economic Benefit Worksheet

**Respondent** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**Media** Water Quality  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$200	3-May-2007	4-May-2007	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)	\$500	17-Nov-2008	15-Nov-2009	0.99	\$25	n/a	\$25

**Notes for DELAYED costs**  
 The estimated cost to sample and analyze the unauthorized discharge that occurred on May 3, 2007. The date required is the date the discharge began and the final date is the date the sample was taken. The estimated cost to develop procedures to ensure that sampling and analysis of discharges takes place. The date required is the effective date of Agreed Order Docket No. 2007-1459-AGR-E and the final date is the expected date of compliance.

### Avoided Costs

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

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

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$700

**TOTAL** \$25

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number** 5

**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(11) and General Permit No. TXG920211, Part V.I.2.

**Violation Description** Failed to have complete sampling records. Specifically, the sampling records for the December 15, 2008 soil samples did not contain the chain of custody, the quality assurance/quality control data, and the identity of the collector.

**Base Penalty** \$10,000

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

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

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	Percent
				x	
					1%

**Matrix Notes** At least 70% of the rule requirement was met.

**Adjustment** \$9,900

\$100

**Violation Events**

Number of Violation Events 1 Number of violation days 64

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

**Violation Base Penalty** \$100

One single event is recommended.

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

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

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$100

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

**Estimated EB Amount** \$8 **Violation Final Penalty Total** \$130

**This violation Final Assessed Penalty (adjusted for limits)** \$130

## Economic Benefit Worksheet

**Respondent** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**Media** Water Quality  
**Violation No.** 5

Percent Interest	Years of Depreciation
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	\$200	4-Feb-2009	15-Nov-2009	0.78	\$8	n/a	\$8
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 have complete sampling records. Date required is the investigation date. Final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$8

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	<b>Harm</b>			<b>Percent</b> <input type="text" value="10%"/>
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	
	Potential	x	<input type="text"/>	

**>> Programmatic Matrix**

<b>Falsification</b>				<b>Percent</b> <input type="text" value="0%"/>
Major	Moderate	Minor	<input type="text"/>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

**Notes**

**Violation Subtotal**

**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** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**Media** Water Quality  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,000	4-Feb-2009	30-Dec-2009	0.90	\$3	\$60	\$63
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 re-establish and maintain vegetative cover in the pens that maintain animals. Date required is the date of the investigation and the final date is the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

**TOTAL**

\$63

**Screening Date** 9-Apr-2009 **Docket No.** 2009-0507-AGR-E **PCW**  
**Respondent** Jochum Schievink dba Jochum Schievink Dairy *Policy Revision 2 (September 2002)*  
**Case ID No.** 34594 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102754892  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Samuel Short

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	<b>Harm</b>			<b>Percent</b> <input type="text" value="10%"/>
	Major	Moderate	Minor	
	Actual	<input type="text"/>	x	
	Potential	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

<b>Falsification</b>				<b>Percent</b> <input type="text" value="0%"/>
Major	Moderate	Minor		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	x
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	x	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**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** Jochum Schievink dba Jochum Schievink Dairy  
**Case ID No.** 34594  
**Reg. Ent. Reference No.** RN102754892  
**Media** Water Quality  
**Violation No.** 7

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	\$1,000	4-Feb-2009	18-Feb-2009	0.04	\$2	n/a	\$2
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 properly dispose of dead animals. Date required is the date of the investigation and the final date is the date the Respondent provided documentation that the dead animals were being properly disposed of.

### 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

\$1,000

**TOTAL**

\$2

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600795579 SCHIEVINK, JOCHUM Classification: AVERAGE Rating: 0.44  
Regulated Entity: RN102754892 JOCHUM SCHIEVINK DAIRY Classification: AVERAGE Site Rating: 0.75  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920211  
Location: 3066 COUNTY ROAD 285, DUBLIN, TX, 76446  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: April 09, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 09, 2004 to April 09, 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? No
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: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- Effective Date: 11/17/2008 ADMINORDER 2007-1459-AGR-E**
- Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 321, SubChapter B 321.31(a)  
Description: Failure to prevent an unauthorized discharge which results in a documented serious impact to the environment.  
Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.44(b)  
Rqmt Prov: TXG920000/Part III.A.5(c) OP  
Description: Failure to conduct waste analyses and/or waste characterization of a waste stream.  
Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.44(a)  
Rqmt Prov: TXG920211, Part IV B.5. OP  
Description: Failed to notify the appropriate regional office orally within 24 hours or upon discovery of the unauthorized discharge
- 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 | 08/31/2004 | (260812) |
| 2 | 06/22/2005 | (396211) |
| 3 | 08/23/2007 | (573102) |
| 4 | 08/28/2007 | (571995) |
| 5 | 05/29/2008 | (680624) |
| 6 | 08/26/2008 | (699963) |
| 7 | 12/08/2008 | (705766) |
| 8 | 03/18/2009 | (736032) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 08/28/2007 (571995) CN600795579**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.46(c)(1)  
Description: Failure to provide documentation of the liner documentation review and a site evaluation required every five years.
- Date: 08/26/2008 (699963) CN600795579**
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125  
30 TAC Chapter 321, SubChapter B 321.36(c)  
Part III.A.6.(d) OP  
Description: Failure to meet required capacity.
- 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  
JOCHUM SHIEVINK DBA  
JOCHUM SHIEVINK DAIRY;  
RN102754892**

§  
§  
§  
§  
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§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0507-AGR -E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Jochum Shievink dba Jochum Shievink Dairy (“Mr. Shievink”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Shievink presented this agreement to the Commission.

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

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Shievink.

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

**FINDINGS OF FACT**

1. Mr. Shievink owns and operates a dairy located at 3066 County Road 285, Dublin, Erath County, Texas (the “Facility”).
2. Mr. Shievink 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 water in the state under the Texas Water Code.

3. During an investigation conducted on February 4, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Shievink:
  - a. Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and direct precipitation from the design rainfall event. Specifically, documentation submitted for a five year evaluation indicated that retention control structures ("RCS") 2 and 3 do not have adequate capacity and that solids in RCS 2 needed to be removed;
  - b. Failed to dewater the RCS and restore the rainfall capacity of the RCS;
  - c. Failed to develop and implement procedures to ensure that discharges are reported to the appropriate Regional Office within 24 hours of discharge or upon discovery, whichever occurs first;
  - d. Failed to develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge;
  - e. Failed to have complete sampling records. Specifically, the sampling records for the December 15, 2008 soil samples did not contain the chain of custody, the quality assurance/quality control data, and the identity of the collector;
  - f. Failed to maintain vegetation, crops, forage growth, or post harvest residues in the normal growing season in pastures that maintain animals. Specifically, animals were noted in pastures that were devoid of vegetation; and
  - g. Failed to properly dispose of dead animals. Specifically, approximately 10 carcasses in various states of decomposition were noted in Land Management Unit 3.
4. Mr. Shievink received notice of the violations on or about March 13, 2009.
5. The Executive Director recognizes that on February 18, 2009, Mr. Shievink properly disposed of the dead animals noted in Land Management Unit 3.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Findings of Fact Nos. 1 and 2, Mr. Shievink is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Mr. Shievink failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and direct precipitation from the design rainfall event, in violation of 30 TEX. ADMIN. CODE §§ 305.125 and 321.36(c) and General Permit No. TXG920211, Part III.A.6.(d).
3. As evidenced by Finding of Fact No. 3.b., Mr. Shievink failed to dewater the RCS and restore the rainfall capacity of the RCS, in violation of TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.c.
4. As evidenced by Finding of Fact No. 3.c., Mr. Shievink failed to develop and implement procedures to ensure that discharges are reported to the appropriate Regional Office within 24 hours of discharge or upon discovery, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 321.44(a); TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.a., and General Permit No. TXG920211.
5. As evidenced by Finding of Fact No. 3.d., Mr. Shievink failed to develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge, in violation of 30 TEX. ADMIN. CODE § 321.44(b); TCEQ Agreed Order Docket No. 2007-1459-AGR-E, Ordering Provision 2.b.; and General Permit No. TXG920211.
6. As evidenced by Finding of Fact No. 3.e., Mr. Shievink failed to have complete sampling records, in violation of 30 TEX. ADMIN. CODE § 305.125(11) and General Permit No. TXG920211, Part V.I.2.
7. As evidenced by Finding of Fact No. 3.f., Mr. Shievink failed to maintain vegetation, crops, forage growth, or post harvest residues in the normal growing season in pastures that maintain animals, in violation of 30 TEX. ADMIN. CODE § 321.39(g)(2) and General Permit No. TXG920211, Part III.B.5.
8. As evidenced by Finding of Fact No. 3.g., Mr. Shievink failed to properly dispose of dead animals, in violation of 30 TEX. ADMIN. CODE § 321.36(1).
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Shievink for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

10. An administrative penalty in the amount of eight thousand three hundred thirty dollars (\$8,330.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. Shievink paid two hundred forty-five dollars (\$245.00) of the administrative penalty. The remaining amount of eight thousand eighty-five dollars (\$8,085.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred thirty-one dollars (\$231.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Mr. Shievink 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, the failure of Mr. Shievink to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Shievink to timely and satisfactorily comply with all of the terms of this Agreed Order.

#### **ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Mr. Shievink is assessed an administrative penalty in the amount of eight thousand three hundred thirty dollars (\$8,330.00) as set forth in Conclusion of Law No.10, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Shievink's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Jochum Shievink dba Jochum Shievink Dairy; Docket No. 2009-0507-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. Shievink shall undertake the following technical requirements:
  - a. Within 15 days of the effective date of this Agreed Order, Mr. Shievink shall:
    - i. Develop and implement procedures to ensure that discharges are reported to the Executive Director and the appropriate TCEQ Regional Office within 24 hours of the discharge or upon discovery, whichever occurs first, in accordance with 30 TEX. ADMIN. CODE § 321.44, and General Permit No. TXG920211;

- ii. Develop and implement procedures to ensure that sampling and analysis requirements are done within the first 30 minutes of discharge in accordance with 30 TEX. ADMIN. CODE § 321.44, and General Permit No. TXG920211; and
  - iii. Submit the complete sampling records for the December 15, 2008 soil samples.
- b. Within 30 days of the effective date of this Agreed Order, Mr. Shievink shall, dewater the RCS and restore the rainfall capacity of the RCS.
- c. Within 60 days of the effective date of this Agreed Order, Mr. Shievink shall:
- i. Submit documentation that RCS Nos. 2 and 3 are properly designed, constructed, operated, and/or maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event, including but not limited to ensuring that RCS 2 and 3 have adequate capacity, are enlarged, and that the solids in RCS 2 are removed; and
  - ii. Re-establish and maintain vegetative cover in the pastures that maintain animals, in accordance with 30 TEX. ADMIN. CODE § 321.39(g)(2).
- d. Within 75 days after the effective date of this Agreed Order, Mr. Shievink shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.c.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Mr. Shievink 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:

Sid Slocum, Water Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-7833

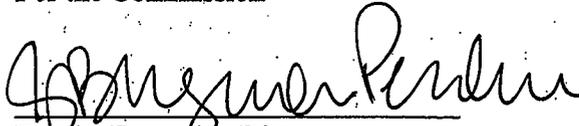
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Shievink. Mr. Shievink is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility referenced in this Agreed Order.
4. If Mr. Shievink fails to comply with any of the Ordering 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, Mr. Shievink's failure to comply is not a violation of this Agreed Order. Mr. Shievink shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Shievink shall notify the Executive Director within seven days after Mr. Shievink 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 Mr. Shievink shall be made in writing to the Executive Director. Extensions are not effective until Mr. Shievink receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Shievink if the Executive Director determines that Mr. Shievink has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Shievink in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
  
10. 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 this Agreed Order to Mr. Shievink, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Shievink, 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

6/25/2010

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 Jochum Shievink dba Jochum Shievink Dairy ("Mr. Shievink"), 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 in this order and/or failure to timely pay the penalty amount, may result in:

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

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

Signature



Name (Printed or typed)  
Jochum Shievink

Date

4-13-10

Title

