

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1827-AGR-E **TCEQ ID:** RN105746176 **CASE NO.:** 38674
RESPONDENT NAME: Randy Earl Wyly

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 1343 County Road 230, Hico, Erath County</p> <p>TYPE OF OPERATION: Application field</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the BD and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 15, 2010. Comments were received on May 28, 2010 from Ms. Lauren Kalisek, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, on behalf of the Bosque River Coalition.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Randy Earl Wyly, 3502 County Road 209, Hico, Texas 76457 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 27, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 22, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of waste from a concentrated animal feeding operation ("CAFO") waste application field. Specifically, the investigator documented that, after a rain event, evidence of a discharge was observed in the roadside ditch that originated from the application field where the Respondent was applying CAFO waste slurry. Samples taken at the point of discharge indicated an ammonia level of 44.6 milligrams per liter ("mg/L"), a biochemical oxygen demand level of 1140 mg/L, and a total suspended solids level of 880 mg/L [TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$1,875</p> <p>Total Deferred: \$375 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,500</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the discharge ceased on April 28, 2009, and that the Respondent plowed in the CAFO waste slurry and ceased applying the CAFO waste slurry at the application field on April 30, 2009.</p>

Additional ID No(s): N/A



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532

www.lglawfirm.com

Ms. Kalisek's Direct Line: (512) 322-5847
E-mail: lkalisek@lglawfirm.com

March 15, 2010

Mr. Samuel Short
Enforcement Coordinator
Texas Commission for Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE
Fax Number: (512) 239-2550

Re: Comments on Proposed Agreed Order for Randy Earl Wyly Dairy;
Docket No.: 2009-1827-AGR-E (2402-04)

Dear Mr. Short:

Please accept these written comments on behalf of the Bosque River Coalition (the "Coalition") concerning the above-referenced Proposed Agreed Order ("AO") for the Randy Earl Wyly Dairy (the "Respondent"). The Coalition is a Texas non-profit corporation formed for the purpose of furthering the protection and enhancement of water quality in the Bosque River watershed. Its membership is comprised of concerned property owners and interests within the watershed. Please feel free to contact me at my law firm, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, phone number (512) 322-5847, fax number (512) 472-0532, concerning any aspect of these comments.

WRITTEN COMMENTS

The Coalition appreciates the Texas Commission on Environmental Quality's (the "Commission's" or "TCEQ's") preparation of the AO and this opportunity to provide comments, and it hereby provides comments to the preparation of the AO and penalty calculation contained therein, as follows:

Calculation of Penalty

The AO contains one violation (the "Violation") for which the penalty in the AO has been assessed. The Coalition asserts that the Violation was improperly classified and should be reclassified so that the Respondent is assessed the appropriate penalty. The Violation concerns a failure to prevent the unauthorized discharge of waste from a concentrated animal feeding operation ("CAFO") waste application field that occurred subsequent to a rain event.

Mr. Samuel Short
 March 15, 2010
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The harm associated with the Violation is classified as an "actual release" causing "moderate harm," meaning that the violation resulted in the release of "significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors."¹ The Violation should be considered a "major harm" based upon the water quality analysis conducted for the unauthorized discharge. According to the penalty calculation worksheet for the AO, the water quality results for the sample collected by the TCEQ investigator—at the roadside ditch into where the unauthorized discharge occurred—indicated levels of water quality parameters even more polluted than the results for a water quality analysis of raw sewage. The table below provides a comparison of the sample results to water quality data for raw domestic sewage.

Constituent	Respondent Sample	Raw Domestic Sewage
Ammonia as N	44.6 mg/L	10-30 mg/L
BOD	1140 mg/L	~350 mg/L
TSS	880 mg/L	240 mg/L

These levels of pollutants in the sample clearly exceed levels that are protective of human health and the environment given that the water quality of the Respondent's sample is *more polluted* than raw domestic sewage, meaning that the Violation should be classified as a "major harm" with a fifty percent (50%) adjustment of the penalty. With the adjustment of the Violation to a "major harm," the number of violation events should also be revised to be "daily" as opposed to "monthly," meaning the Violation should be four (4) violation events because the violation lasted from April 27, 2009 to April 30, 2009 (4 days).

Based upon the percentage adjustment increases for the Violation for the magnitude of harm and the number of violation events, the Coalition contends that the appropriate penalty that the Respondent should be assessed is \$12,000.

The Bosque River Coalition hereby requests that the Executive Director consider these comments in evaluating the proposed Agreed Order for the Randy Earl Wyly Dairy. The Coalition appreciates the opportunity to submit these comments and the consideration it hopes the Executive Director and TCEQ staff will give to them.

Sincerely,


 Lauren Kalisek

LJK:mab

¹ TCEQ, *Penalty Policy of the Texas Commission on Environmental Quality* pg. 6, RG-253, September 2002.

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 28, 2010

Ms. Lauren Kalisek
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Re: Comment Received, Proposed Agreed Enforcement Order
Randy Earl Wyly
RN105746176; Docket No. 2009-1827-AGR-E; Enforcement Case No. 38674

Dear Ms. Kalisek:

On March 15, 2010, we received your letter on behalf of the Bosque River Coalition concerning the proposed agreed enforcement order for Randy Earl Wyly ("the Respondent") in Erath County, Texas. I have forwarded your letter to our General Counsel's Office so that the Commissioners can consider your comments regarding the proposed order. We would like to take this opportunity to respond to your comments.

The Texas Commission on Environmental Quality ("TCEQ") staff and the Respondent agreed on the terms of the proposed order on December 21, 2009. Accordingly, the Respondent was assessed an administrative penalty of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875), of which Three Hundred Seventy-Five Dollar (\$375) has been deferred in accordance with our expedited order process. The Respondent has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty. In addition to the penalty, the order recognizes that the Respondent plowed in the concentrated animal feeding operation ("CAFO") waste slurry and ceased applying the CAFO waste slurry at the application field on April 30, 2009.

You indicate in your letter that you appreciate the TCEQ for the preparation of the agreed order and the opportunity to provide comments. You then indicate that the violation was improperly classified and should be reclassified. The violation is categorized as an "actual release" with a "moderate harm" on the PCW under the Environmental, Property, and Human Health Matrix. You indicated that this violation should be classified as "actual release" with a "major harm". In this case, there was no documented evidence of significant harm to human health, property, or the environment. The TCEQ determined that the violation was properly categorized as an "actual release" with a "moderate harm". Therefore, the 50% adjustment is not appropriate. Additionally, you stated that in the violation, the unauthorized discharge occurred on April 27, 2009 and was not corrected until April 30, 2009, four days after it began. You then stated that since this violation should have been classified as an "actual release" with a "major harm", the penalty should have been assessed a total of four daily events based on the TCEQ's Penalty Policy. The TCEQ's position is that since this violation was properly categorized as an "actual release" with a "moderate harm", one monthly event is appropriate based on the TCEQ's Penalty Policy.

We appreciate your input into the enforcement action currently pending against the Respondent. Your name

Ms. Lauren Kalisek
Page 2

has been added to the mailing list to receive a copy of the final order, should the Commission adopt it. Mr. Samuel Short is the Enforcement Coordinator assigned to this case. If you have further concerns or comments related to the order, please do not hesitate to call Mr. Short at (512) 239-5363. For complaints related to the Respondent's current operating conditions or procedures, you should continue to contact our Stephenville Regional Office at (254) 965-9200.

Sincerely,



Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

BS/ss

cc: Mr. Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office, TCEQ

Ms. Lauren Kalisek
Page 3

bcc: Mr. Samuel Short, Coordinator, Enforcement Division, MC MC 149
Central Records, MC 213, Building E, 1st Floor
Enforcement Division Reader File

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Bryan W. Shaw, Ph.D., Chairman
Buddy Garcia, Commissioner
Carlos Rubinstein, Commissioner
Les Tobman, General Counsel

Date: May 28, 2010

Thru: *BAS* Bryan Sinclair, Director, Enforcement Division

From: Susan Johnson, Manager, Enforcement Division

Subject: Response to Comment Received Concerning Proposed Agreed Enforcement Order, Randy Earl Wyly, Hico, Erath County
RN105746176, Enforcement Case No. 38674, Docket No. 2009-1827-AGR-E

In response to a publication in the *Texas Register* on February 12, 2010, one comment has been received regarding a proposed agreed enforcement order requiring certain actions of Randy Earl Wyly. The comment was received within the thirty-day public comment period.

The proposed order resolves a violation of TEX. WATER CODE § 26.121(a) for failing to prevent the unauthorized discharge of waste from a concentrated animal feeding operation ("CAFO") waste application field. Specifically, on June 22, 2009, the investigator documented that, after a rain event, evidence of a discharge was observed in the roadside ditch that originated from the application field where the Respondent was applying CAFO waste slurry. Samples taken at the point of discharge indicated an ammonia level of 44.6 milligrams per liter ("mg/L"), a biochemical oxygen demand level of 1140 mg/L, and a total suspended solids level of 880 mg/L. TCEQ staff and Randy Earl Wyly agreed on the terms of the proposed order on December 21, 2009. The order would assess a One Thousand Eight Hundred Seventy-Five Dollar (\$1,875) penalty, of which Three Hundred Seventy-Five Dollars (\$375) is deferred in accordance with the expedited order process.

A copy of the comment, and the staff response to the comment, are attached for your consideration. In summary, the commenter is expressing concerns that the violation was improperly classified and should be reclassified based on the water quality results for the samples collected. Staff's position, as reflected in the response, is that there was no documented evidence of significant harm to human health, property, or the environment. The TCEQ determined that the violation was properly categorized. Accordingly, the Enforcement Division recommends that you adopt this proposed order.

Attachments

cc: Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office
Samuel Short, Coordinator, Enforcement Division
Central Records, MC 213, Building E, 1st Floor
Enforcement Division Reader File



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	29-Jun-2009		
	PCW	16-Nov-2009	Screening	9-Nov-2009
	EPA Due			

RESPONDENT/FACILITY INFORMATION			
Respondent	Randy Earl Wylly		
Reg. Ent. Ref. No.	RN105746176		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38674	No. of Violations	1
Docket No.	2009-1827-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No 0.0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit 0.0% Enhancement* Subtotal 6

Total EB Amounts *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 9-Nov-2009

Docket No. 2009-1827-AGR-E

PCW

Respondent Randy Earl Wylie

Policy Revision 2 (September 2002)

Case ID No. 38674

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105746176

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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> 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

No change due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 9-Nov-2009

Docket No. 2009-1827-AGR-E

PCW

Respondent Randy Earl Wily

Policy Revision 2 (September 2002)

Case ID No. 38674

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105746176

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent the unauthorized discharge of waste from a concentrated animal feeding operation ("CAFO") waste application field. Specifically, the Investigator documented that, after a rain event, evidence of a discharge was observed in the roadside ditch that originated from the application field where the Respondent was applying CAFO waste slurry. Samples taken at the point of discharge indicated an ammonia level of 44.6 milligrams per liter ("mg/L"), a biochemical oxygen demand level of 1140 mg/L, and a total suspended solids level of 880 mg/L.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 4

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from the date of the investigation, April 27, 2009, to the date the waste slurry was plowed into the ground, April 30, 2009.

Good Faith Efforts to Comply

25.0% Reduction \$625

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent returned to compliance on April 30, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent Randy Earl Wyly
Case ID No. 38674
Reg. Ent. Reference No. RN105746176
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				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)	\$2,000	27-Apr-2009	30-Apr-2009	0.01	\$1	n/a	\$1

Notes for DELAYED costs

The estimated cost to plow in CAFO waste slurry in a manner that would prevent an unauthorized discharge. Date required is the date the discharge began and the final date is the date the CAFO waste slurry was plowed into the field and the Respondent ceased applying waste to the field.

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

\$1

Compliance History Report

Customer/Respondent/Owner-Operator: CN601116213 WYLY, RANDY EARL Classification: AVERAGE Rating: 9.05
Regulated Entity: RN105746176 1343 COUNTY ROAD 230 Classification: Site Rating:
ID Number(s):
Location: 1343 COUNTY ROAD 230, HICO, TX, 76457
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: November 06, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 06, 2004 to November 06, 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.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 06/22/2009 (748569)
2 06/22/2009 (749910)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
RANDY EARL WYLY
RN105746176

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1827-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Randy Earl Wyly ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent operates an application field at 1343 County Road 230 in Hico, Erath County, Texas (the "Site").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 27, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) is deferred contingent

RECEIVED
TCEQ
ADMINISTRATIVE
DIVISION
JUL 1 2009

upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the discharge ceased on April 28, 2009, and that the Respondent plowed in the concentrated animal feeding operation ("CAFO") waste slurry and ceased applying the CAFO waste slurry at the application field on April 30, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Site, the Respondent is alleged to have failed to prevent the unauthorized discharge of waste from a CAFO waste application field, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on April 27, 2009. Specifically, the investigator documented that, after a rain event, evidence of a discharge was observed in the roadside ditch that originated from the application field where the Respondent was applying CAFO waste slurry. Samples taken at the point of discharge indicated an ammonia level of 44.6 milligrams per liter ("mg/L"), a biochemical oxygen demand level of 1140 mg/L, and a total suspended solids level of 880 mg/L.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Randy Earl Wyly, Docket No. 2009-1827-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdan
For the Executive Director

2/17/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

RW
Signature

12-16-09
Date

Randy Earl Wyly
Name (Printed or typed)
Authorized Representative of
Randy Earl Wyly

owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.