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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0781-MLM-E TCEQ ID: RN105581573 CASE NO.: 37668
RESPONDENT NAME: Kevin Vu dba Kevin Vu Poultry Production

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 checked="" type="checkbox"/> AIR	<input checked="" 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 type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Kevin Vu Poultry Production, 155 County Road 506, Limestone County</p> <p>TYPE OF OPERATION: Poultry farm</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Complaints were received on September 24, 2008, and March 16, 19, and 20, 2009, alleging the unauthorized use of a municipal solid waste ("MSW") pit and odor nuisance. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 26, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Kirk Schoppe, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-0489; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Cuong Kevin Vu, Owner, Kevin Vu Poultry Production, 155 County Road 506, Mexia, Texas 76667 Respondent's Attorney: Mr. James D. Bradbury, 201 Main Street, Suite 600, Fort Worth, Texas 76102</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: September 24, 2008, March 16, March 19, and March 20, 2009</p> <p>Date of Investigation Relating to this Case: September 24, 2008 and March 20, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 6 and May 8, 2009 (NOE)</p> <p>Background Facts: These were complaint investigations.</p> <p>WASTE</p> <p>1) Failure to prevent unauthorized disposal of MSW at the Site. Specifically, the Respondent allowed approximately 259 cubic yards of treated lumber, construction debris, plastic, scrap metal, and trash to be disposed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].</p> <p>AIR</p> <p>2) Failure to prevent nuisance level odors from impacting off-property receptors. Specifically, odors emanating from the Site were documented leaving the property during the March 20, 2009 investigation [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p>	<p>Total Assessed: \$2,050</p> <p>Total Deferred: \$410 <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: \$1,640</p> <p>Site Compliance History Classification <input checked="" 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, on November 5, 2008, the unauthorized MSW was removed from the Site and disposed of properly.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, ensure that an appropriate depth of bedding material is in place at the Site prior to introducing chickens in each barn, and maintain documentation of the depth of the bedding upon the introduction of chickens to any barn for a period of two years;</p> <p>b. Within 30 days after the effective date of this Agreed Order, change the base material or litter every four bird cycles, and maintain documentation of the changing of the material at the Site for a period of two years;</p> <p>c. Within 60 days after the effective date of this Agreed Order, submit a plan and schedule for the control of odors emitted at the property boundary and, upon approval by the Executive Director, implement the plan in accordance with the approved schedule; and</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a through c.</p>

Additional ID No(s): NSR Permit 85602



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	11-May-2009			
	PCW	16-Sep-2009	Screening	21-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Kevin Vu dba Kevin Vu Poultry Production				
Reg. Ent. Ref. No.	RN105581573				
Facility/Site Region	9-Waco	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37668	No. of Violations	2		
Docket No.	2009-0781-MLM-E	Order Type	1660		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media	Air	Enf. Coordinator	Kirk Schoppe		
		EC's Team	Enforcement Team 4		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.		
Compliance History	15.0% Enhancement	Subtotals 2, 3, & 7 \$300
Notes	Enhancement due to three NOVs with same or similar violations.	
Culpability	No 0.0% Enhancement	Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments		Subtotal 5 \$250
Economic Benefit	0.0% Enhancement*	Subtotal 6 \$0
Total EB Amounts	\$5,800	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$142,951	
SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,050
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	Final Penalty Amount	\$2,050
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty \$2,050
DEFERRAL	20.0% Reduction	Adjustment -\$410
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$1,640

Screening Date 21-May-2009

Docket No. 2009-0781-MLM-E

PCW

Respondent Kevin Vu dba Kevin Vu Poultry Production

Policy Revision 2 (September 2002)

Case ID No. 37668

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105581573

Media [Statute] Municipal Solid Waste

Enf. Coordinator Kirk Schoppe

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)	3	15%
	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 judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 15%

>> **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 due to three NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 21-May-2009		Docket No. 2009-0781-MLM-E		PCW
Respondent Kevin Vu dba Kevin Vu Poultry Production			<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37668			<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN105581573				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Kirk Schoppe				
Violation Number		1		
Rule Cite(s)		30 Tex. Admin. Code § 330.15(c)		
Violation Description		Failed to prevent unauthorized disposal of municipal solid waste ("MSW"). Specifically, the Respondent allowed approximately 259 cubic yards of treated lumber, construction debris, plastic, scrap metal, and trash to be disposed of at the Facility.		
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			X
	Potential			Percent
				10%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
				Percent
				0%
Matrix Notes		Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.		
Adjustment				\$9,000
				\$1,000
Violation Events				
Number of Violation Events		1		
		239 Number of violation days		
<small>mark only one with an x</small>	daily			
	weekly			
	monthly			
	quarterly		X	
	semiannual			
	annual			
	single event			
Violation Base Penalty				\$1,000
One quarterly event is recommended from the September 24, 2008 investigation date to the date the unauthorized MSW was removed, November 5, 2008.				
Good Faith Efforts to Comply		25.0% Reduction		\$250
		Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary				
Ordinary		X		
N/A			(mark with x)	
Notes		The Respondent returned to compliance on November 5, 2008 and the NOE is dated May 6, 2009.		
Violation Subtotal				\$750
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		\$18		Violation Final Penalty Total \$900
This violation Final Assessed Penalty (adjusted for limits)				\$900

Economic Benefit Worksheet

Respondent: Kevin Vu dba Kevin Vu Poultry Production
Case ID No.: 37868
Reg. Ent. Reference No.: RN105581573
Media: Municipal Solid Waste
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$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	\$3,212	24-Sep-2008	5-Nov-2008	0.12	\$18	n/a	\$18
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of the municipal solid waste. The Date Required is the date of the first investigation and the Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$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

	\$3,212	TOTAL		\$18
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Screening Date 21-May-2009	Docket No. 2009-0781-MLM-E	PCW	
Respondent Kevin Vu dba Kevin Vu Poultry Production	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37868	<i>PCW Revision October 30, 2009</i>		
Reg. Ent. Reference No. RN105581573			
Media [Statute] Municipal Solid Waste			
Enf. Coordinator Kirk Schoppe			
Violation Number 2			
Rule Cite(s)	30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)		
Violation Description	Failed to prevent nuisance level odors from impacting off-property receptors. Specifically, odors emanating from the Respondent's poultry farm were documented leaving the property during the March 20, 2009 investigation.		
Base Penalty		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Percent			10%
>> Programmatic Matrix			
Falsification			
Major Moderate Minor			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>			
Percent			0%
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants.		
Adjustment			\$9,000
			\$1,000
Violation Events			
Number of Violation Events	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Number of violation days
	62		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input checked="" type="checkbox"/>	
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	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
N/A	<input checked="" type="checkbox"/>	(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	\$5,781	Violation Final Penalty Total	\$1,150
This violation Final Assessed Penalty (adjusted for limits)			\$1,150

Economic Benefit Worksheet

Respondent Kevin Vu dba Kevin Vu Poultry Production
Case ID No. 37868
Reg. Ent. Reference No. RN105581573
Media Municipal Solid Waste
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	\$57,282	20-Mar-2009	17-Dec-2009	0.75	\$142	\$2,846	\$2,988
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$58,495	20-Mar-2009	15-Oct-2009	0.57	\$112	\$2,233	\$2,346
Engineering/construction	\$20,712	20-Mar-2009	27-May-2009	0.19	\$13	\$267	\$270
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$250	20-Mar-2009	15-Jul-2010	1.32	\$17	n/a	\$17
Training/Sampling	\$1,500	20-Mar-2009	20-Jan-2010	0.84	\$63	n/a	\$63
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	20-Mar-2009	15-Jul-2010	1.32	\$99	n/a	\$99

Notes for DELAYED costs: Estimated costs to develop and implement standard policies and procedures to control odor nuisances. Date required is the date of the investigation. Final dates are the expected date of compliance and dates when procedures and projects were implemented.

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	\$139,739	TOTAL	\$5,781
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Compliance History Report

Customer/Respondent/Owner-Operator: CN602544082 VU, KEVIN Classification: AVERAGE Rating: 2.00
Regulated Entity: RN105581573 KEVIN VU POULTRY PRODUCTION Classification: HIGH Site Rating: 0.00
ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION 85602
Location: 155 CR 506, LIMESTONE COUNTY, TX
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: May 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 14, 2004 to May 14, 2009

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

Name: Kirk Schoppe Phone: (512) 239-0489

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 judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/01/2008	(687109)
2	10/10/2008	(703652)
3	10/16/2008	(704506)
4	11/19/2008	(708294)
5	12/05/2008	(710157)
6	12/19/2008	(721285)
7	01/28/2009	(706275)
8	02/05/2009	(725071)
9	03/20/2009	(738799)
10	05/05/2009	(743618)

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

Date: 10/09/2008 (704095)

CN602544082

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.4

5C THSC Chapter 382 382.085(a)

5C THSC Chapter 382 382.085(b)

Description: Failure to comply with Title 30 Texas Administrative Code (TAC) Chapter 101, Rule

101.4.

Date: 10/14/2008 (703652)

CN602544082

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)

Description: Failure to obtain written authorization from the TCEQ prior to the dumping or disposal of municipal solid waste.

Date: 10/16/2008 (704506)

CN602544082

Self NO

Classification: Minor

Citation: 30 TAC Chapter 111, SubChapter B 111.201

5C THSC Chapter 382 382.085(b)

Description: Failure to comply with the general prohibition of outdoor burning within the State of Texas as required by 30 Texas Administrative Code §111.201 (30 TAC § 111.201), by not meeting an exception as provided in 30 TAC § 111.205-111.215.

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
KEVIN VU DBA KEVIN VU
POULTRY PRODUCTION
RN105581573**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0781-MLM-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 Kevin Vu dba Kevin Vu Poultry Production ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a poultry farm at 155 County Road 506 in Limestone County, Texas (the "Site").
2. The Site involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 May 11, 2009 and May 13, 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 Two Thousand Fifty Dollars (\$2,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Six Hundred Forty Dollars (\$1,640) of the administrative penalty and Four Hundred Ten Dollars (\$410) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that, on November 5, 2008, the unauthorized MSW was removed from the Site and disposed of properly.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent unauthorized disposal of MSW at the Site, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on September 24, 2008. Specifically, the Respondent allowed approximately 259 cubic yards of treated lumber, construction debris, plastic, scrap metal, and trash to be disposed of at the Site.
2. Failed to prevent nuisance level odors from impacting off-property receptors, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b), as documented during an investigation conducted on March 20, 2009. Specifically, odors emanating from the Site were documented leaving the property during the March 20, 2009 investigation.

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: Kevin Vu dba Kevin Vu Poultry Production, Docket No. 2009-0781-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, ensure that an appropriate depth of bedding material is in place at the Site prior to introducing chickens in each barn, and maintain documentation of the depth of the bedding upon the introduction of chickens to any barn for a period of two years;
 - b. Within 30 days after the effective date of this Agreed Order, change the base material or litter every four bird cycles, and maintain documentation of the changing of the material at the Site for a period of two years;
 - c. Within 60 days after the effective date of this Agreed Order, submit a plan and schedule for the control of odors emitted at the property boundary and, upon approval by the Executive Director, implement the plan in accordance with the approved schedule; and
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.c.

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 fines and imprisonment for knowing violations."

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section, Manager
Air Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Szelles
For the Executive Director

7/11/2010
Date

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

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

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

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

[Signature]
Signature

5/22/10
Date

QUANG KEVIN VU
Name (Printed or typed)
Authorized Representative of
Kevin Vu dba Kevin Vu Poultry Production

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.

