Executive Summary – Enforcement Matter – Case No. 41156
Laurence Elmer Clowdus dba Clowdus Dairy
RN102900511
Docket No. 2011-0248-AGR-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
AGR
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
Clowdus Dairy, 625 County Road 530, Evant, Hamilton County
Type of Operation:
Concentrated animal feeding operation
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: June 3, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $1,010
Amount Deferred for Expedited Settlement: $202
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $808
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - Average
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41156
Laurence Elmer Clowdus dba Clowdus Dairy
RN102900511
Docket No. 2011-0248-AGR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: December 17, 2010
Date(s) of NOE(s): January 14, 2011

Violation Information

Failed to maintain a proper vegetative buffer strip distance of 125 feet as noted on the Facility's site map. Specifically, at the time of the investigation, waste was being applied within the buffer area designated on the site map in Land Management Unit ("LMU") No. 4 [30 TEX. ADMIN. CODE § 321.36(b) and 321.40(h) and TCEQ General Permit No. TXG920113, Part III.A.2(b) and A.11(e)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on February 28, 2011, the Respondent delineated the 125 foot vegetative buffer zone around LMU No. 4 with painted stakes and trained employees to land apply waste within the painted stakes.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Laurence Clowdus, Owner, Clowdus Dairy, 625 County Road 530, Evant, Texas 76525
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	25-Jan-2011					
PCW	7-Feb-2011	**Screening**	7-Feb-2011	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	Laurence Elmer Clowdus dba Clowdus Dairy		
Reg. Ent. Ref. No.	RN102900511		
Facility/Site Region	4-Dallas/Fort Worth	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	41156	**No. of Violations**	1
Docket No.	2011-0248-AGR-E	**Order Type**	1660
Media Program(s)	Water Quality	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Heather Brister
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **11.0%** Enhancement — *Subtotals 2, 3, & 7*: **$110**

Notes: Enhancement for one NOV for same/similar violations and three NOVs for dissimilar 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*: **$100**

Economic Benefit — **0.0%** Enhancement* — *Subtotal 6*: **$0**

Total EB Amounts $4
Approx. Cost of Compliance $350

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: **$1,010**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **0.0%** — *Adjustment*: **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: **$1,010**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: **$1,010**

DEFERRAL — **20.0%** Reduction — *Adjustment*: **-$202**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: **$808**

Screening Date 7-Feb-2011 **Docket No.** 2011-0248-AGR-E **PCW**

Respondent Laurence Elmer Clowdus dba Clowdus Dairy *Policy Revision 2 (September 2002)*

Case ID No. 41156 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102900511

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	3	6%
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%

		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) 11%

>> 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 for one NOV for same/similar violations and three NOVs for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 11%

Screening Date 7-Feb-2011 **Docket No.** 2011-0248-AGR-E **PCW**

Respondent Laurence Elmer Clowdus dba Clowdus Dairy *Policy Revision 2 (September 2002)*

Case ID No. 41156 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102900511

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.36(b) and 321.40(h) and Texas Commission on Environmental Quality ("TCEQ") General Permit No. TXG920113, Part III.A.2(b) and A.11(e)(1)

Violation Description Failed to maintain a proper vegetative buffer strip distance of 125 feet as noted on the Facility's site map. Specifically, at the time of the investigation, waste was being applied within the buffer area designated on the site map in Land Management Unit ("LMU") No. 4.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: 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 as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events: 1 — 73 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date (December 17, 2010) to the screening date (February 7, 2011).

Good Faith Efforts to Comply

10.0% Reduction — $100

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

Notes: The Respondent achieved compliance on February 28, 2011.

Violation Subtotal $900

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,010

This violation Final Assessed Penalty (adjusted for limits) $1,010

Economic Benefit Worksheet

Respondent Laurence Elmer Clowdus dba Clowdus Dairy
Case ID No. 41156
Req. Ent. Reference No. RN102900511
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)	$350	17-Dec-2010	28-Feb-2011	0.20	$4	n/a	$4
Notes for DELAYED costs	Actual cost to delineate the 125 foot vegetative buffer zone around LMU No. 4 with painted stakes and to train employees to land apply waste within the painted stakes. Date required is the investigation date and the final date is the compliance date.						
Avoided Costs	**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $350

TOTAL $4

Compliance History

Customer/Respondent/Owner-Operator:	CN600795884	CLOWDUS, LAURENCE ELMER	Classification: AVERAGE	Rating: 2.43
Regulated Entity:	RN102900511	CLOWDUS DAIRY	Classification: AVERAGE	Site Rating: 1.29
ID Number(s):	WASTEWATER AGRICULTURE		EPA ID	TXG015254
	WASTEWATER AGRICULTURE		PERMIT	TXG920113

Location: 625 COUNTY ROAD 530, EVANT, TX, 76525

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: March 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 21, 2006 to March 21, 2011

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

Name: Heather Brister Phone: (254) 761-3034

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)?
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2010 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. 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	08/18/2006	(484321)
2	08/20/2007	(566248)
3	05/13/2008	(637995)
4	10/03/2008	(702970)
5	11/09/2009	(781205)
6	06/24/2010	(827261)
7	10/19/2010	(865434)
8	01/18/2011	(887335)

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

Date: **09/13/2007** (574132) CN600795884

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.44(b)(1)
TXG920000/Part III.A.5(c) OP

Description: Failure to conduct and submit an analysis of a discharge which occurred from a retention control structure.

Date: **04/30/2008** (637995) CN600795884

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.45(b)
TXG920000/Part III.C.2 OP

Description: Failure of the operator, located in a DOPA, to complete at least 8 hours of training each two-years. TXG920000 Part III.C.2

Self Report? NO Classificatio Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.36(g)(1)
TXG92000/Part IIIA.12(b) OP

Description: Failure to collect soil samples from each LMU where waste was applied and not analyzed according to proper procedures. TXG920000 Part III.A.12(b)

Date **10/03/2008** (702970) CN600795884

Self Report? NO Classificatio Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.36(g)(3)
TXG92000/Part III.A.12(c)(2) OP

Description: Failure to properly collect samples within the same 45-day time frame with adequate depths for each soil type per LMU. TXG920000 Part III.A.12(c)(2)

Date **05/28/2010** (803760) CN600795884

Self Report? NO Classificatio Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.40(h)

TXG920000/Part III.A.11.(e)(1) OP

Description: Failure to maintain designated buffer distances in accordance with NRCS Practice Standard Code 393. Part III.A.11.(e)(1)

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
LAURENCE ELMER CLOWDUS	**§**	
DBA CLOWDUS DAIRY	**§**	
RN102900511	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0248-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 Laurence Elmer Clowdus dba Clowdus Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a concentrated animal feeding operation located at 625 County Road 530 in Evant, Hamilton County, Texas (the "Facility").

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 January 19, 2011.

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 Ten Dollars ($1,010) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Eight Hundred Eight Dollars ($808) of the administrative penalty and Two Hundred Two Dollars ($202) 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 February 28, 2011, the Respondent delineated the 125 foot vegetative buffer zone around Land Management Unit ("LMU") No. 4 with painted stakes and trained employees to land apply waste within the painted stakes.

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 Facility, the Respondent is alleged to have failed to maintain a proper vegetative buffer strip distance of 125 feet as noted on the Facility's site map, in violation of 30 TEX. ADMIN. CODE § 321.36(b) and 321.40(h) and TCEQ General Permit No. TXG920113, Part III.A.2(b) and A.11(e)(1), as documented during an investigation conducted on December 17, 2010. Specifically, at the time of the investigation, waste was being applied within the buffer area designated on the site map in LMU No. 4.

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: Laurence Elmer Clowdus dba Clowdus Dairy, Docket No. 2011-0248-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 Facility 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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

For the Executive Director

8/22/11
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

8/5/11
Date

Laurence Clowdus
Name (Printed or typed)
Authorized Representative of
Laurence Elmer Clowdus dba Clowdus Dairy

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.