Executive Summary – Enforcement Matter – Case No. 41737
R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy
RN103759254
Docket No. 2011-0846-AGR-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
AGR
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
RJ Dairy, 4366 County Road 340, Dublin, Erath 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: September 30, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $8,090
Amount Deferred for Expedited Settlement: $1,618
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $6,472
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN603014002 - Average
CN603106519 - Average
CN602678591 - Average
Site/RN - Average
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41737
R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy
RN103759254
Docket No. 2011-0846-AGR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 9, 2011
Date(s) of NOE(s): May 20, 2011

Violation Information

1. Failed to restore the rainfall capacity of the retention control structure ("RCS") after an accumulation of waste that reduced such capacity. Specifically, the Respondents failed to restore the rainfall capacity of RCS No. 1 once the sludge accumulation reached one foot above the designated pump mark of zero [TCEQ General Permit No. TXG921143, Part III.A.9.(a)(1) and 30 TEX. ADMIN. CODE § 321.39(b)(1)].

2. Failed to meet the required design capacity for the RCS. Specifically, RCS No. 1 design capacity is 20.23 acre-foot ("ac-ft"), but the required capacity is 24.8 ac-ft. Also, RCS Nos. 1 and 2 combined design capacity is 28.16 ac-ft, however, the required combined capacity is 29.89 ac-ft [TCEQ General Permit No. TXG921143, Part III.A.6.(d) and 30 TEX. ADMIN. CODE § 321.38(e)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By June 23, 2011, the Respondents submitted a Notice of Change and obtained approval to reduce the required capacity of RCS Nos. 1 and 2.

Technical Requirements:

The Order will require the Respondent to:

a. Within 15 days, restore the rainfall capacity of RCS No. 1;

b. Within 30 days, develop and implement procedures to ensure that the rainfall capacity of RCS No. 1 is maintained; and

c. Within 60 days, submit written certification demonstrating compliance.

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: Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
TCEQ SEP Coordinator: N/A
Respondent: R.J. Dairy, 4366 County Road 340, Dublin, Texas 76446
Arturo Rodriguez, Director/Owner, R.J. Dairy, L.L.C., 4366 County Road 340, Dublin, Texas 76446
Hector Jimenez, Director/Owner, R.J. Dairy, L.L.C., P.O. Box 223, Dublin, Texas 76446
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	31-May-2011				
PCW	3-Jun-2011	Screening	31-May-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy		
Reg. Ent. Ref. No.	RN103759254		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41737	No. of Violations	2
Docket No.	2011-0846-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		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* $8,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 4.0% Enhancement — *Subtotals 2, 3, & 7* $340

Notes: Enhancement for two NOVs with dissimilar violations.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $750

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

Total EB Amounts $130
Approx. Cost of Compliance $3,500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $8,090

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $8,090

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $8,090

DEFERRAL 20.0% Reduction — *Adjustment* -$1,618

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 $6,472

Screening Date 31-May-2011 **Docket No.** 2011-0846-AGR-E **PCW**

Respondent R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy

Policy Revision 2 (September 2002)

Case ID No. 41737

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103759254

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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*)	0	0%
	Other written NOVs	2	4%
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) 4%

>> 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 two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 31-May-2011 **Docket No.** 2011-0846-AGR-E **PCW**

Respondent R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy

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

Case ID No. 41737
Reg. Ent. Reference No. RN103759254
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) TCEQ General Permit No. TXG921143, Part III.A.9.(a)(1) and 30 Tex. Admin. Code § 321.39(b)(1)

Violation Description Failed to restore the rainfall capacity of the retention control structure ("RCS") after an accumulation of waste that reduced such capacity. Specifically, the Respondents failed to restore the rainfall capacity of RCS No. 1 once the sludge accumulation reached one foot above the designated pump mark of zero.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to restore the rainfall capacity of the RCS could result in the release of significant amounts of pollutants.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 83 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 of March 9, 2011 to the screening date of May 31, 2011.

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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $122

Statutory Limit Test

Violation Final Penalty Total $1,040

This violation Final Assessed Penalty (adjusted for limits) $1,040

Economic Benefit Worksheet

Respondent R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy
Case ID No. 41737
Reg. Ent. Reference No. RN103759254
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				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)	$3,000	9-Mar-2011	1-Jan-2012	0.82	$122	n/a	$122

Notes for DELAYED costs Estimated cost to restore the rainfall capacity of the RCS and to maintain it at the required levels. Date required is the investigation date and the final date is the expected 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 $3,000

TOTAL $122

Screening Date 31-May-2011 **Docket No.** 2011-0846-AGR-E **PCW**

Respondent R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy

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

Case ID No. 41737
Reg. Ent. Reference No. RN103759254
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s) TCEQ General Permit No. TXG921143, Part III.A.6.(d) and 30 Tex. Admin. Code § 321.38(e)(4)

Violation Description Failed to meet the required design capacity for the RCS. Specifically, RCS No. 1 design capacity is 20.23 acre-foot ("ac-ft"), but the required capacity is 24.8 ac-ft. Also, RCS Nos. 1 and 2 combined design capacity is 28.16 ac-ft, however, the required combined capacity is 29.89 ac-ft.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to meet the required design capacity for the RCS could result in the release of significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 3 | 83 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Three monthly events are recommended from the investigation date of March 9, 2011 to the screening date of May 31, 2011.

Good Faith Efforts to Comply

10.0% Reduction $750

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

Notes: The Respondents achieved compliance by June 23, 2011 for this violation.

Violation Subtotal $6,750

Economic Benefit (EB) for this violation

Estimated EB Amount $7

Statutory Limit Test

Violation Final Penalty Total $7,050

This violation Final Assessed Penalty (adjusted for limits) $7,050

Economic Benefit Worksheet

Respondent R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy
Case ID No. 41737
Reg. Ent. Reference No. RN103759254
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or $							
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs	$500	9-Mar-2011	23-Jun-2011	0.29	$7	n/a	$7
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to submit a Notice of Change ("NOC") and obtain approval under General Permit No. TXG921143 to reduce the required capacity of RCS Nos. 1 and 2. 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 $500

TOTAL $7

Compliance History

Customer/Respondent/Owner-Operator:	CN603014002	Arturo Rodriguez	Classification: AVERAGE	Rating: 0.75
Regulated Entity:	RN103759254	RJ DAIRY	Classification: AVERAGE	Site Rating: 0.75

ID Number(s):	WASTEWATER AGRICULTURE	EPA ID	TXG015023
	WASTEWATER AGRICULTURE	EPA ID	TX0129020
	WASTEWATER AGRICULTURE	PERMIT	TXG921143
	WASTEWATER AGRICULTURE	PERMIT	WQ0004865000
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0059W

Location: 4366 COUNTY ROAD 340, DUBLIN, TX, 76446

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 03, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2006 to June 03, 2011

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 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	11/26/2007	(596740)
2	02/19/2010	(791347)
3	05/23/2011	(913461)

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

Compliance History

Customer/Respondent/Owner-Operator:	CN603106519	JIMENEZ, HECTOR	Classification: AVERAGE	Rating: 0.75
Regulated Entity:	RN103759254	RJ DAIRY	Classification: AVERAGE	Site Rating: 0.75

ID Number(s):	WASTEWATER AGRICULTURE	EPA ID	TXG015023
	WASTEWATER AGRICULTURE	EPA ID	TX0129020
	WASTEWATER AGRICULTURE	PERMIT	TXG921143
	WASTEWATER AGRICULTURE	PERMIT	WQ0004865000
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0059W

Location: 4366 COUNTY ROAD 340, DUBLIN, TX, 76446

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 03, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2006 to June 03, 2011

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 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 11/26/2007 (596740)
2 02/19/2010 (791347)
3 05/23/2011 (913461)

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

Compliance History

Customer/Respondent/Owner-Operator:	CN602678591	R.J. Dairy, L.L.C.	Classification: AVERAGE	Rating: 1.14
Regulated Entity:	RN103759254	RJ DAIRY	Classification: AVERAGE	Site Rating: 1.14

ID Number(s):	WASTEWATER AGRICULTURE	EPA ID	TXG015023
	WASTEWATER AGRICULTURE	EPA ID	TX0129020
	WASTEWATER AGRICULTURE	PERMIT	TXG921143
	WASTEWATER AGRICULTURE	PERMIT	WQ0004865000
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0059W

Location: 4366 COUNTY ROAD 340, DUBLIN, TX, 76446

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 03, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2006 to June 03, 2011

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 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	11/10/2006	(514718)
2	11/26/2007	(596740)
3	02/07/2008	(617689)
4	04/20/2009	(741834)
5	02/19/2010	(791347)
6	05/23/2011	(913461)

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

Date: 11/10/2006 (514718) CN602678591

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.49(f)

Description: Failure to funish soil samples results within 60 days of the samples being taken to the ED and appropriate regional office.

Date: 04/10/2009 (741834) CN602678591

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(B)

Description: Failure to take soil samples within the same 45-days each year.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.49(f)

Description: Failure of soil samples results to be furnished within 60 days of the samples being taken to the ED and appropriate regional office.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)

Description: Failure of the PPP to include a log of liner maintenance for any structural or mechanical damage and a 5-year site evaluation by a NRCS engineer, licensed professional engineer or qualified groundwater scientist.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.40(7)

Description: Failure to acquire a variance for any retention basins, pens or land application sites within 500 feet of a public well or 150 feet of a private well.

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	**§**	
R.J. DAIRY, L.L.C. AND ARTURO	**§**	**TEXAS COMMISSION ON**
RODRIGUEZ AND HECTOR	**§**	
JIMENEZ DBA RJ DAIRY	**§**	
RN103759254	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0846-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 R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a concentrated animal feeding operation ("CAFO") at 4366 County Road 340 in Dublin, Erath County, Texas (the "Facility").

2. The Respondents have discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.

4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about May 25, 2011.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Thousand Ninety Dollars ($8,090) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Six Thousand Four Hundred Seventy-Two Dollars ($6,472) of the administrative penalty and One Thousand Six Hundred Eighteen Dollars ($1,618) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents 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 Respondents 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 by June 23, 2011, the Respondents submitted a Notice of Change ("NOC") and obtained approval under TCEQ General Permit No. TXG921143 to reduce the required capacity of retention control structure ("RCS") Nos. 1 and 2.

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 Respondents have 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 owners and operators of the Facility, the Respondents are alleged to have:

1. Failed to restore the rainfall capacity of the RCS after an accumulation of waste that reduced such capacity, in violation of TCEQ General Permit No. TXG921143, Part III.A.9.(a)(1) and 30 TEX. ADMIN. CODE § 321.39(b)(1), as documented during an investigation conducted on March 9, 2011. Specifically, the Respondents failed to restore the rainfall capacity of RCS No. 1 once the sludge accumulation reached one foot above the designated pump mark of zero.

2. Failed to meet the required design capacity for the RCS, in violation of TCEQ General Permit No. TXG921143, Part III.A.6.(d) and 30 TEX. ADMIN. CODE § 321.38(e)(4), as

documented during an investigation conducted on March 9, 2011. Specifically, RCS No. 1 design capacity is 20.23 acre-foot ("ac-ft"), but the required capacity is 24.8 ac-ft. Also, RCS Nos. 1 and 2 combined design capacity is 28.16 ac-ft, however, the required combined capacity is 29.89 ac-ft.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy, Docket No. 2011-0846-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. R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. It is further ordered that the Respondents shall undertake the following technical requirements:

   a. Within 15 days after the effective date of this Agreed Order, restore the rainfall capacity of RCS No. 1;

   b. Within 30 days after the effective date of this Agreed Order, develop and implement procedures to ensure that the rainfall capacity of RCS No. 1 is maintained; and

   c. Within 60 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. 3.a. and 3.b. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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."

The certification shall be submitted 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:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.

5. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.

8. 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.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

10/14/11
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

8/29/11
Date

RJ Dairy L.L.C
Name (Printed or typed)
Authorized Representative of
R.J. Dairy, L.L.C.

OWNERS
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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

10/14/11
Date

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- 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

8/18/11
Date

Arturo Rodriguez
Name (Printed or typed)
Authorized Representative of
Arturo Rodriguez dba RJ 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 10/14/11
For the Executive Director Date

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- 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.

_____ 8/18/11
Signature Date

Hector Jimenez _____ Owner
Name (Printed or typed) Title
Authorized Representative of
Hector Jimenez dba RJ Dairy

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.