

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-1565-AGR-E **TCEQ ID:** RN102743119 **CASE NO.:** 40442  
**RESPONDENT NAME:** Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Jimmy Don Pack Dairy, located north of Highway 8, approximately five miles northwest of the intersection of State Highway 8 and Farm-to-Market Road 988, Erath County</p> <p><b>TYPE OF OPERATION:</b> Concentrated animal feeding operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on February 7, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Jimmy Don Pack, Owner, Jimmy Don Pack Dairy, 173 County Road 415, Stephenville, Texas 76401  Mr. Meine Huisman, Operator, Jimmy Don Pack Dairy, 173 County Road 415, Stephenville, Texas 76401  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 2, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 23, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failed to complete the modifications of retention control structure ("RCS") No. 1 to meet the total capacity required by the permit within the prescribed timeframe. Specifically, modifications to increase the capacity of the RCS at the Facility were not completed by the April 5, 2010 extended deadline [30 TEX. ADMIN CODE §§ 321.36(b) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003563000, Part X, Special Provisions A.1. and A.2].</p>	<p><b>Total Assessed:</b> \$2,440</p> <p><b>Total Deferred:</b> \$488  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,952</p> <p><b>Compliance History Classifications:</b>                      Person/CN - Average                      Site/RN - Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, certify that modifications to the RCS have been completed as required by TPDES Permit No. WQ0003563000, Part X, Special Provisions, A.1 and A.2. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0003563000



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	30-Aug-2010	<b>Screening</b>	21-Sep-2010	<b>EPA Due</b>	
	<b>PCW</b>	24-Sep-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy				
<b>Reg. Ent. Ref. No.</b>	RN102743119				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40442	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1565-AGR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Samuel Short
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

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

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 21-Sep-2010

**Docket No.** 2010-1565-AGR-E

**PCW**

**Respondent** Jimmy Don Pack and Meine Huisman dba Jimmy I

Policy Revision 2 (September 2002)

**Case ID No.** 40442

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102743119

**Media [Statute]** Water Quality

**Enf. Coordinator** Samuel Short

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 22%

>> **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 the same/similar violations and one Agreed Order with denial of liability within the last five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 22%

Screening Date 21-Sep-2010

Docket No. 2010-1565-AGR-E

PCW

Respondent Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dair

Policy Revision 2 (September 2002)

Case ID No. 40442

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102743119

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) 30 Tex. Admin Code §§ 321.36(b) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003563000, Part X, Special Provisions A.1. and A.2.

Violation Description Failed to complete the modifications of retention control structure ("RCS") No. 1 to meet the total capacity required by the permit within the prescribed timeframe. Specifically, modifications to increase the capacity of the RCS at the Facility were not completed by the April 5, 2010 extended deadline.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failure to complete the modifications of RCS No. 1 could result in the release of significant amounts of pollutants which would 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 2 169 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended from the date the modifications were due, April 5, 2010, to the date of screening, September 21, 2010.

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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$213

Violation Final Penalty Total \$2,440

This violation Final Assessed Penalty (adjusted for limits) \$2,440

## Economic Benefit Worksheet

**Respondent** Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy  
**Case ID No.** 40442  
**Req. Ent. Reference No.** RN102743119  
**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)	\$3,500	5-Apr-2010	24-Jun-2011	1.22	\$213	n/a	\$213

Notes for DELAYED costs

Estimated cost to complete the modifications of RCS No. 1. Date required is the date when modification was due to be completed 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

\$3,500

**TOTAL**

\$213

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602561219 PACK, JIMMY DON Classification: AVERAGE Rating: 7.55

Regulated Entity: RN102743119 JIMMY DON PACK DAIRY Classification: AVERAGE Site Rating: 7.55

ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0003563000

Location: located north of Highway 8, approximately five miles northwest of the intersection of State Highway 8 and Farm-to-Market Road 988 in Erath County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 21, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 21, 2005 to September 21, 2010

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

Name: Samuel Short Phone: (512) 239-5363

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. 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.
- Effective Date: 11/19/2007 ADMINORDER 2007-0528-AGR-E  
Classification: Major  
Citation: 30 TAC Chapter 321, SubChapter B 321.42(s)  
Description: Failed to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB")
- 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  | 04/07/2006 | (456035) |
| 2  | 01/03/2007 | (533624) |
| 3  | 03/23/2007 | (543480) |
| 4  | 02/15/2008 | (616504) |
| 5  | 02/15/2008 | (618089) |
| 6  | 05/11/2009 | (702364) |
| 7  | 08/17/2009 | (762813) |
| 8  | 04/30/2010 | (798253) |
| 9  | 08/19/2010 | (849223) |
| 10 | 08/24/2010 | (849159) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 02/15/2008 (616504) CN602561219  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
Description: Failure to maintain ditches and diversion berms to retain contaminated run-off from

open lots and RCS.

F. Environmental audits.

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 Report

Customer/Respondent/Owner-Operator: CN602591125 HUISMAN, MEINE Classification: AVERAGE Rating: 7.55

Regulated Entity: RN102743119 JIMMY DON PACK DAIRY Classification: AVERAGE Site Rating: 7.55

ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0003563000

Location: located north of Highway 8, approximately five miles northwest of the intersection of State Highway 8 and Farm-to-Market Road 988 in Erath County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 21, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 21, 2005 to September 21, 2010

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

Name: Samuel Short Phone: (512) 239-5363

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. 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.

Effective Date: 11/19/2007

ADMINORDER 2007-0528-AGR-E

Classification: Major

Citation: 30 TAC Chapter 321, SubChapter B 321.42(s)

Description: Failed to develop and operate under a Comprehensive Nutrient Management Plan ("CNMP") certified by the Texas State Soil and Water Conservation Board ("TSSWCB")

- 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	04/07/2006	(456035)
2	01/03/2007	(533624)
3	03/23/2007	(543480)
4	02/15/2008	(616504)
5	02/15/2008	(618089)
6	05/11/2009	(702364)
7	08/17/2009	(762813)
8	04/30/2010	(798253)
9	08/19/2010	(849223)
10	08/24/2010	(849159)

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

Date: 02/15/2008 (616504)

CN602591125

Self NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)

Description: Failure to maintain ditches and diversion berms to retain contaminated run-off from open lots and RCS.

F. Environmental audits.

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>JIMMY DON PACK AND MEINE</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>HUISMAN DBA JIMMY DON</b>	<b>§</b>	
<b>PACK DAIRY</b>	<b>§</b>	
<b>RN102743119</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2010-1565-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 Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack 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") located north of Highway 8, approximately five miles northwest of the intersection of State Highway 8 and Farm-to-Market Road 988 in Erath County, Texas (the "Site").
2. The Respondents have caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 August 28, 2010.
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 Two Thousand Four Hundred Forty Dollars (\$2,440) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Nine Hundred Fifty-Two Dollars (\$1,952) of the administrative penalty and Four Hundred Eighty-Eight Dollars (\$488) 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 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.
10. 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.
11. 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 Respondents are alleged to have failed to complete the modifications of retention control structure ("RCS") No. 1 to meet the total capacity required by the permit within the prescribed timeframe, in violation of 30 TEX. ADMIN CODE §§ 321.36(b) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003563000, Part X, Special Provisions A.1. and A.2., as documented during an investigation conducted on August 2, 2010. Specifically, modifications to increase the capacity of the RCS at the Facility were not completed by the April 5, 2010 extended deadline.

## **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: Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy, Docket No. 2010-1565-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 Respondents 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, within 90 days after the effective date of this Agreed Order, the Respondents shall certify that modifications to the RCS have been completed as required by TPDES Permit No. WQ0003563000, Part X, Special Provisions, A.1 and A.2. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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."

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 Site 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

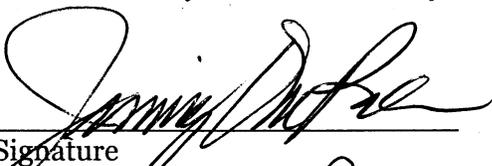
\_\_\_\_\_  
Date 1/10/2011

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

\_\_\_\_\_  
Date 11-27-10

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Jimmy Don Pack

\_\_\_\_\_  
Title Owner

**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

Joan Szolter  
For the Executive Director

11/10/2011  
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.

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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.

Meine Huisman  
Signature

11-27-10  
Date

Meine Huisman  
Name (Printed or typed)  
Authorized Representative of  
Meine Huisman

Operator  
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.