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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1938-AGR-E **TCEQ ID:** RN102065166 **CASE NO.:** 40798
RESPONDENT NAME: Randy Earl Wyly dba Randy Wyly Dairy

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Randy Wyly Dairy, located on the west side of County Road 209, approximately 1.5 miles south of the intersection of County Road 209 and United States Highway 67, Erath County</p> <p>TYPE OF OPERATION: Concentrated animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on September 15, 2010 alleging that Wyly Dairy No. 1 was possibly irrigating wastewater on the embankments of the retention control structures ("RCS"). There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 14, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Randy Earl Wyly, Owner, Randy Wyly Dairy, 3502 County Road 209, Hico, Texas 76457 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: September 15, 2010</p> <p>Date of Investigation Relating to this Case: September 15, 2010</p> <p>Date of NOV/NOE Relating to this Case: October 29, 2010 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failed to complete the modifications of RCS Nos. 1 and 2 to meet the total capacity required by the permit within the prescribed timeframe. Specifically, modifications to increase the capacity of RCS Nos. 1 and 2 at the Site were not completed by the August 12, 2010 extended deadline [30 TEX. ADMIN. CODE §§ 321.42(c) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003160000, Part X, Special Provisions A.1. and A.2].</p>	<p>Total Assessed: \$2,520</p> <p>Total Deferred: \$504 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,016</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>It is further ordered that, within 90 days after the effective date of this Agreed Order, the Respondent shall certify that modifications to RCS Nos. 1 and 2 have been completed as required by TPDES Permit No. WQ0003160000, 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): WQ0003160000



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	2-Nov-2010	Screening	2-Dec-2010	EPA Due	
		7-Dec-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	Randy Earl Wyly dba Randy Wyly Dairy				
Reg. Ent. Ref. No.	RN102065166				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	40798	No. of Violations	1
Docket No.	2010-1938-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	26.0% Enhancement	Subtotals 2, 3, & 7	\$520
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Notes: Enhancement for three NOV's with dissimilar violations and one Agreed Order with denial of liability within the last five years.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$375
 Approx. Cost of Compliance: \$7,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,520
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$2,520
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,520
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DEFERRAL	20.0% Reduction	Adjustment	-\$504
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,016
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Screening Date 2-Dec-2010

Docket No. 2010-1938-AGR-E

PCW

Respondent Randy Earl Wyly dba Randy Wyly Dairy

Policy Revision 2 (September 2002)

Case ID No. 40798

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102065166

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	3	6%
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) 26%

>> **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 three NOVs with dissimilar violations and one Agreed Order with denial of liability within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 26%

Screening Date 2-Dec-2010

Docket No. 2010-1938-AGR-E

PCW

Respondent Randy Earl Wyly dba Randy Wyly Dairy

Policy Revision 2 (September 2002)

Case ID No. 40798

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102065166

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 321.42(c) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003160000, Part X, Special Provisions A.1. and A.2.

Violation Description

Failed to complete the modifications of retention control structure ("RCS") Nos. 1 and 2 to meet the total capacity required by the permit within the prescribed timeframe. Specifically, modifications to increase the capacity of RCS Nos. 1 and 2 at the Site were not completed by the August 12, 2010 extended deadline.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to complete the modifications of RCS Nos. 1 and 2 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

112 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, August 12, 2010, to the date of screening, December 2, 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 Respondent does 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 \$375

Violation Final Penalty Total \$2,520

This violation Final Assessed Penalty (adjusted for limits) \$2,520

Economic Benefit Worksheet

Respondent Randy Earl Wyly dba Randy Wyly Dairy
Case ID No. 40798
Reg. Ent. Reference No. RN102065166
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$7,000	12-Aug-2010	7-Sep-2011	1.07	\$375	n/a	\$375

Notes for DELAYED costs

Estimated cost to complete the modifications of RCS Nos. 1 and 2. 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 \$7,000

TOTAL \$375

Compliance History

Customer/Respondent/Owner-Operator:	CN601116213 WYLY, RANDY EARL	Classification: AVERAGE	Rating: 8.16
Regulated Entity:	RN102065166 RANDY WYLY DAIRY	Classification: AVERAGE	Site Rating: 9.67
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE	EPA ID PERMIT	TX0130893 WQ0003160000
Location:	located on the west side of County Road 209, approximately 1.5 miles south of the intersection of County Road 209 and United States Highway 67 in Erath County, Texas		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	December 02, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 02, 2005 to December 02, 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 2007-0529-AGR-E |
| Classification: | Major | |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.42(s) | |
| Description: | Failure to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board by December 31, 2006. | |
- 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. (CEEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 05/23/2006 | (463827) |
| 2 | 03/15/2007 | (543336) |
| 3 | 05/21/2007 | (555462) |
| 4 | 07/16/2007 | (567683) |
| 5 | 11/16/2007 | (600574) |
| 6 | 02/07/2008 | (617727) |
| 7 | 12/19/2008 | (709924) |
| 8 | 11/20/2009 | (782382) |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 03/10/2006 | (458266) | CN601116213 |
| Self Report? | NO | | |
| | | | Classification: Moderate |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.40(7) | | |
| Description: | FAILURE TO MAINTAIN THE 100 FOOT BUFFER DISTANCE BETWEEN WATER COURSES AND WASTE APPLICATION. | | |
-
- | | | | |
|--------------|---|----------|-----------------------|
| Date: | 05/25/2006 | (463827) | CN601116213 |
| Self Report? | NO | | |
| | | | Classification: Minor |
| Citation: | 30 TAC Chapter 321, SubChapter B 321.49(d)(2) | | |

Description: Failure of the dairy CAFO in a sole-source impairment zone to conduct soil sampling at least once every 12 months. 321.49(d)(2)
Date: 05/18/2007 (555462) CN601116213
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)
Description: Failure of all ponds, pipes, ditches, pumps, and diversion & irrigation equipment to be properly maintained.

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



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
RANDY EARL WYLY DBA RANDY
WYLY DAIRY
RN102065166**

§
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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1938-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Randy Earl Wyly dba Randy Wyly 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 ("CAFO") located on the west side of County Road 209, approximately 1.5 miles south of the intersection of County Road 209 and United States Highway 67 in Erath County, Texas (the "Site").
2. The Respondent 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 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 November 3, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Five Hundred Twenty Dollars (\$2,520) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Sixteen Dollars (\$2,016) of the administrative penalty and Five Hundred Four Dollars (\$504) 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 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.
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 Respondent is alleged to have failed to complete the modifications of retention control structure ("RCS") Nos. 1 and 2 to meet the total capacity required by the permit within the prescribed timeframe, in violation of 30 TEX. ADMIN. CODE §§ 321.42(c) and 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0003160000, Part X, Special Provisions A.1. and A.2., as documented during an investigation conducted on September 15, 2010. Specifically, modifications to increase the capacity of RCS Nos. 1 and 2 at the Site were not completed by the August 12, 2010 extended deadline.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Randy Earl Wyly dba Randy Wyly Dairy, Docket No. 2010-1938-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. It is further ordered that, within 90 days after the effective date of this Agreed Order, the Respondent shall certify that modifications to RCS Nos. 1 and 2 have been completed as required by TPDES Permit No. WQ0003160000, 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

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/14/2011

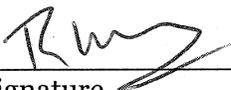
Date

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.

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

12-22-10

Date

Randy Wyly

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