EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-2000-IWD-E **TCEQ ID:** RN100831312 **CASE NO.:** 40716

RESPONDENT NAME: Monterey Mushrooms, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Monterey Mushrooms, located at 5816 United States Highway 75 South, approximately 1.25 miles north of the intersection of United States Highway 75 and State Highway Spur 67, and 5.5 miles south of Madisonville, Madison County

TYPE OF OPERATION: Agribusiness

SMALL BUSINESS: X **Yes** __ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 28, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0735; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

Respondent: Mr. Frank J. Tydlacka, Jr., Engineering Manager, Monterey Mushrooms, Inc., 5816 Highway 75 South, Madisonville, Texas 77864

Mr. Ray Selle, Secretary and Chief Financial Officer, Monterey Mushrooms, Inc., 260 Westgate Drive, Watsonville, California 95076

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** October 12, 2010 **Date of NOV/NOE Relating to this Case:** November 5, 2010 (NOE) **Background Facts:** This was a routine investigation. **WATER** 1) Failed to comply with permitted effluent limitations for platinum cobalt, pH, and copper [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001896000, Effluent Limitations and Monitoring Requirements No. 1 (Outfall 001) and Effluent Limitations and Monitoring Requirements No. 2 (Outfall 004)]. 2) Failed to timely submit effluent monitoring results at the intervals specified in the permit. Specifically, the monthly discharge monitoring reports ("DMRs") for Outfalls 002, 003 and 004 for the monitoring periods ending April 30, 2010 and May 31, 2010 were not submitted until November 14, 2010 [30 TEX. ADMIN. CODE §§ 305.125(17) and 319.1 and TPDES Permit No. WQ0001896000, Monitoring and Reporting Requirements No. 1].	**Total Assessed:** $9,720 **Total Deferred:** $1,944 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $7,776 **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ **Yes** _X_ **No** **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted monthly DMRs for Outfalls 002, 003 and 004 for the monitoring periods ending April 30, 2010 and May 31, 2010 on November 14, 2010. **Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs; and b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0001896000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported DMRs, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Additional ID No(s).: WQ0001896000

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	8-Nov-2010				
PCW	30-Nov-2010	Screening	12-Nov-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Monterey Mushrooms, Inc.		
Reg. Ent. Ref. No.	RN100831312		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40716	No. of Violations	2
Docket No.	2010-2000-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Carlie Konkol
		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* **$3,600**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **175.0%** Enhancement *Subtotals 2, 3, & 7* **$6,300**

Notes: Enhancement for 30 months of self-reported effluent violations and one agreed order without denial.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **$0**

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

Total EB Amounts $972
Approx. Cost of Compliance $10,400

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$9,900**

OTHER FACTORS AS JUSTICE MAY REQUIRE **-1.8%** *Adjustment* **-$180**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction in the penalty so that monthly self-reported effluent violations do not overly impact the penalty amount.

Final Penalty Amount **$9,720**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$9,720**

DEFERRAL **20.0%** Reduction *Adjustment* **-$1,944**

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 **$7,776**

Screening Date 12-Nov-2010 **Docket No.** 2010-2000-IWD-E **PCW**

Respondent Monterey Mushrooms, Inc.

Case ID No. 40716

Reg. Ent. Reference No. RN100831312

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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*)	30	150%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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) 175%

>> 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 30 months of self-reported effluent violations and one agreed order without denial.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 175%

Screening Date	12-Nov-2010	**Docket No.** 2010-2000-IWD-E	**PCW**
Respondent	Monterey Mushrooms, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	40716		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN100831312		
Media [Statute]	Water Quality		
Enf. Coordinator	Carlie Konkol		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001896000, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001 and Effluent Limitations and Monitoring Requirements No. 2 for Outfall 004

Violation Description Failed to comply with permitted effluent limitations, as documented during a record review on October 12, 2010 and shown in the attached Effluent Table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			x
	Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment have been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 3 | 152 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three quarterly events are recommended; one quarter containing September 2009 for Outfall 004 and two quarters containing the months March, April, May, June and July 2010 for Outfall 001.

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 $3,000

Economic Benefit (EB) for this violation

Estimated EB Amount $959

Statutory Limit Test

Violation Final Penalty Total $8,100

This violation Final Assessed Penalty (adjusted for limits) $8,100

Economic Benefit Worksheet

Respondent Monterey Mushrooms, Inc.
Case ID No. 40716
Req. Ent. Reference No. RN100831312
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)	$10,000	30-Sep-2009	31-Aug-2011	1.92	$959	n/a	$959

Notes for DELAYED costs Estimated costs to evaluate the wastewater treatment system to identify and repair problems related to the treatment system. The Date Required is the first date of noncompliance. The Final Date is the expected date of compliance with permitted effluent limitations.

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 $10,000

TOTAL $959

Screening Date 12-Nov-2010 **Docket No.** 2010-2000-IWD-E **PCW**

Respondent Monterey Mushrooms, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40716

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100831312

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(17) and 319.1 and TPDES Permit No. WQ0001896000, Monitoring and Reporting Requirements No. 1

Violation Description Failed to timely submit effluent monitoring results at the intervals specified in the permit, as documented in a record review on October 12, 2010. Specifically, the monthly discharge monitoring reports ("DMR") for Outfalls 002, 003 and 004 for the monitoring periods ending April 30, 2010 and May 31, 2010 were not submitted until November 14, 2010.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes: At least 70% of the permit requirement was met.

Adjustment $9,900

$100

Violation Events

Number of Violation Events 6

183 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $600

Six single events are recommended, one for each report.

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 $600

Economic Benefit (EB) for this violation

Estimated EB Amount $13

Statutory Limit Test

Violation Final Penalty Total $1,620

This violation Final Assessed Penalty (adjusted for limits) $1,620

Economic Benefit Worksheet

Respondent Monterey Mushrooms, Inc.
Case ID No. 40716
Reg. Ent. Reference No. RN100831312
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	$150	20-May-2010	14-Nov-2010	0.49	$4	n/a	$4
Training/Sampling	$250	20-May-2010	28-Feb-2011	0.78	$10	n/a	$10
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to properly prepare and submit the DMRs ($25 per report) and to update operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished. Date Required is the date the first missing DMR was due and the Final Dates are the date the DMRs were submitted and the expected date of compliance to update operational guidance and conduct employee training.

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 $400

TOTAL $13

Monterey Mushrooms, Inc.
TPDES Permit No. WQ0001896000
Docket No. 2010-2000-IWD-E

Effluent Table – Outfall 001						
Permitted Effluent Limits	Monitoring Periods					
	Sept. 2009	March 2010	April 2010	May 2010	June 2010	July 2010
Color (PT-CO units) Daily Average 300 Color Units	C	C	738.125	421.25	C	C
Color (PT-CO units) Daily Maximum 400 Color Units	C	550	1000	562	C	C
Copper Daily Average Loading 0.041 lbs/day	C	C	C	C	0.078	0.227
Copper Daily Maximum Loading 0.089 lbs/day	C	C	C	C	0.121	0.422

Effluent Table – Outfall 004						
pH Minimum Concentration 6.0 SU	3.8	C	C	C	C	C

PT-CO – Platinum Cobalt
lbs/day – Pounds Per Day

C – Compliant
SU – Standard Units

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601445992	Monterey Mushrooms, Inc.	Classification: AVERAGE	Rating: 2.55
Regulated Entity:	RN100831312	MONTEREY MUSHROOMS	Classification: AVERAGE	Site Rating: 2.55

ID Number(s):			
	AIR NEW SOURCE PERMITS	PERMIT	3664B
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	MD0003R
	WASTEWATER	PERMIT	WQ0001896000
	WASTEWATER	EPA ID	TX0063401
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	54883

Location: 5816 UNITED STATES HIGHWAY 75 SOUTH, APPROXIMATELY 1.25 MILES NORTH OF THE INTERSECTION OF UNITED STATES HIGHWAY 75 AND STATE HIGHWAY SPUR 67, AND 5.5 MILES SOUTH OF MADISONVILLE, MADISON COUNTY, TEXAS

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: November 09, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 09, 2005 to November 09, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Carlie Konkol Phone: (512) 239-0735

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 of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. If Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership 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: 11/3/2006 ADMINORDER 2006-0558-IWD-E
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Effluent Limits PERMIT
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

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	04/27/2006	(455816)
2	03/08/2006	(474213)
3	11/22/2005	(474215)
4	12/27/2005	(474216)
5	01/23/2006	(474217)
6	05/02/2006	(502127)
7	05/30/2006	(502128)
8	07/03/2006	(524473)

9	08/22/2006	(524474)
10	09/25/2006	(524475)
11	10/17/2006	(549422)
12	11/27/2006	(549423)
13	12/27/2006	(549424)
14	02/26/2007	(583185)
15	03/30/2007	(583186)
16	04/26/2007	(583187)
17	05/23/2007	(583188)
18	06/28/2007	(583189)
19	01/25/2007	(583190)
20	07/17/2007	(603831)
21	08/14/2007	(603832)
22	09/13/2007	(603833)
23	10/15/2007	(603834)
24	11/12/2007	(622584)
25	12/17/2007	(622585)
26	01/18/2008	(622586)
27	02/18/2008	(674161)
28	03/18/2008	(674162)
29	04/18/2008	(674163)
30	05/19/2008	(692467)
31	06/12/2008	(692468)
32	07/18/2008	(692469)
33	08/14/2008	(713582)
34	09/19/2008	(713583)
35	10/17/2008	(713584)
36	11/19/2008	(729598)
37	01/20/2009	(729599)
38	02/16/2009	(752856)
39	03/12/2009	(752857)
40	04/16/2009	(752858)
41	12/16/2008	(752859)
42	05/14/2009	(770468)
43	06/11/2009	(770469)
44	02/15/2010	(811059)
45	07/17/2009	(811060)
46	08/18/2009	(811061)
47	09/18/2009	(811062)
48	10/19/2009	(811063)
49	11/13/2009	(811064)
50	12/16/2009	(811065)
51	01/19/2010	(811066)
52	03/17/2010	(833097)
53	04/15/2010	(833098)
54	05/17/2010	(833099)
55	06/16/2010	(846960)
56	07/19/2010	(861453)
57	08/18/2010	(867719)
58	11/05/2010	(870307)
59	11/01/2010	(872243)

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

Date: 11/30/2005 (474216) CN601445992

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2005 (474217) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2006 (474213) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2006 (502127) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2006 (502128) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2006 (524473) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2006 (524474) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2006 (524475) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2006 (549422) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2006 (549423) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006 (549424) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2006 (583190) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2007 (583185) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2007 (583186) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2007 (583187) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2007 (583188) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2007 (583189) CN601445992
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2007 (603834) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2008 (674161) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/29/2008 (674162) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2008 (674163) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2008 (692469) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2008 (713584) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2009 (752857) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2009 (811063) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2010 (833098) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2010 (833099) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2010 (846960) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2010 (861453) CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2010 CN601445992
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
MONTEREY MUSHROOMS, INC.	**§**	
RN100831312	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-2000-IWD-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 Monterey Mushrooms, Inc. ("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 an agribusiness located at 5816 United States Highway 75 South, approximately 1.25 miles north of the intersection of United States Highway 75 and State Highway Spur 67, and 5.5 miles south of Madisonville, Madison County, Texas (the "Facility").

2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

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

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 10, 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 Nine Thousand Seven Hundred Twenty Dollars ($9,720) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Seven Hundred Seventy-Six Dollars ($7,776) of the administrative penalty and One Thousand Nine Hundred Forty-Four Dollars ($1,944) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent submitted monthly discharge monitoring reports ("DMR") for Outfalls 002, 003 and 004 for the monitoring periods ending April 30, 2010 and May 31, 2010 on November 14, 2010.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to comply with permitted effluent limitations, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001896000, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001 and Effluent Limitations and Monitoring Requirements No. 2 for Outfall 004, as documented during a record review conducted on October 12, 2010 and shown in the following Effluent Table:

Effluent Table – Outfall 001						
Permitted Effluent Limits	Monitoring Periods					
	Sept. 2009	March 2010	April 2010	May 2010	June 2010	July 2010
Color (PT-CO units) Daily Average 300 Color Units	C	C	738.125	421.25	C	C
Color (PT-CO units) Daily Maximum 400 Color Units	C	550	1000	562	C	C
Copper Daily Average Loading 0.041 lbs/day	C	C	C	C	0.078	0.227
Copper Daily Maximum Loading 0.089 lbs/day	C	C	C	C	0.121	0.422

Effluent Table – Outfall 004						
pH Minimum Concentration 6.0 SU	3.8	C	C	C	C	C

PT-CO – Platinum Cobalt
lbs/day – Pounds Per Day
C – Compliant
SU – Standard Units

2. Failed to timely submit effluent monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(17) and 319.1 and TPDES Permit No. WQ0001896000, Monitoring and Reporting Requirements No. 1. Specifically, the monthly DMRs for Outfalls 002, 003 and 004 for the monitoring periods ending April 30, 2010 and May 31, 2010 were not submitted until November 14, 2010, as documented during a record review conducted on October 12, 2010.

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: Monterey Mushrooms, Inc., Docket No. 2010-2000-IWD-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs, in accordance with TPDES Permit No. WQ0001896000, Monitoring and Reporting Requirements No. 1; and

   b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0001896000, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 fine 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility 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

John Sadlier
For the Executive Director

4/4/2011
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

3/22/11
Date

Ray Selle
Name (Printed or typed)
Authorized Representative of
Monterey Mushrooms, Inc.

Secretary and CFO
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.