

Executive Summary – Enforcement Matter – Case No. 39809
RENE COUMANS DBA BELLE VUE DAIRY
RN102887031
Docket No. 2010-0913-AGR-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
AGR

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
nine miles southeast of Sulphur Springs, on the east side of County Road 1567 in Hopkins, County

Type of Operation:
dairy/concentrated animal feeding operation ("CAFO")

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: *On or about October 25, 2010, Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code and no longer operates the facility.

Interested Third-Parties: None

Texas Register Publication Date: May 13, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$4,730

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$4,730 (subject to disposition in bankruptcy)*

SEP Conditional Offset: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 39809
RENE COUMANS DBA BELLE VUE DAIRY
RN102887031
Docket No. 2010-0913-AGR-E

Investigation Information

Complaint Date(s): February 2, 2010
Complaint Information: Complaint alleged run-off from the facility into a nearby creek.
Date(s) of Investigation: February 3, 2010 through February 17, 2010
Date(s) of NOV(s): August 6, 2009
Date(s) of NOE(s): May 14, 2010

Violation Information

1. Failed to prevent a discharge of wastewater from a CAFO into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.31(a) and 321.37(d), and Texas Pollutant Discharge Elimination System (“TPDES”) General Permit No. TXG920089, Part III.A.5(a)(1)].
2. Failed to identify and implement measures used to prevent contamination into water in the state [30 TEX. ADMIN. CODE § 321.46(a)(1) and (6) and TPDES General Permit No. TXG920089, Part III.A.1(a) and Part III.A.4(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. By February 17, 2010, ceased the discharge of wastewater from the Facility and repaired the damaged transfer hose; and
2. By February 23, 2010, constructed a diversion dam to route future wastewater discharges into retention control structure (“RCS”) No. 3.

Litigation Information

Date Petition(s) Filed: January 11, 2011; March 1, 2011
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: March 24, 2011

Contact Information

TCEQ Attorneys: James Sallans, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Evette Alvarado, Waste Enforcement Section, (512) 239-2573

TCEQ Regional Contact: Noel Luper, Tyler Regional Office, MC R-5, (903) 535-5174

Respondent: Rene Coumans, Owner, Belle Vue Dairy, 3415 FM 1567, Como, Texas 75431

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-May-2010	Screening	4-Jun-2010	EPA Due	
	PCW	15-Sep-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Rene Coumans dba Belle Vue Dairy
Reg. Ent. Ref. No.	RN102887031
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	39809	No. of Violations	2	
Docket No.	2010-0913-AGR-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Evette Alvarado	
		EC's Team	Enforcement Team 1	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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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	19.0% Enhancement	Subtotals 2, 3, & 7	\$855
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Notes: Enhancement recommended for three NOVs with same or similar violations as those cited in the current action and two NOVs with unrelated violations.

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	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$329
 Approx. Cost of Compliance \$15,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,730
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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	\$4,730
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,730
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$4,730
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Screening Date 4-Jun-2010

Docket No. 2010-0913-AGR-E

PCW

Respondent Rene Coumans dba Belle Vue Dairy

Policy Revision 2 (September 2002)

Case ID No. 39809

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102887031

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<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) 19%

>> 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 recommended for three NOVs with same or similar violations as those cited in the current action and two NOVs with unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 19%

Screening Date 4-Jun-2010 **Docket No.** 2010-0913-AGR-E **PCW**
Respondent Rene Coumans dba Belle Vue Dairy *Policy Revision 2 (September 2002)*
Case ID No. 39809 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102887031
Media [Statute] Water Quality
Enf. Coordinator Evette Alvarado

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment have been exposed to significant amounts of pollutants as a result of this violation."/>				
					Adjustment <input type="text" value="\$7,500"/>

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="8"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>
	weekly	<input type="text"/>	
	monthly	<input checked="" type="text" value="x"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	mark with x)
Notes	<input type="text" value="The Respondent returned to compliance by February 23, 2010."/>	
Violation Subtotal <input type="text" value="\$1,875"/>		

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**
This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Rene Coumans dba Belle Vue Dairy
Case ID No. 39809
Reg. Ent. Reference No. RN102887031
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	\$10,000	16-Feb-2010	23-Feb-2010	0.02	\$1	\$13	\$13
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to construct a diversion dam to route wastewater spills into the RCS (\$10,000). Date required is the date the discharge occurred. Final date is the date corrective actions were completed.

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

\$13

Screening Date	4-Jun-2010	Docket No.	2010-0913-AGR-E	PCW
Respondent	Rene Coumans dba Belle Vue Dairy			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39809			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102887031			
Media [Statute]	Water Quality			
Enf. Coordinator	Evette Alvarado			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 321.46(a)(1) and (6) and TPDES General Permit No. TXG920089, Part III.A.1(a) and III.A.4(a)			
Violation Description	Failed to identify and implement measures used to prevent contamination to water in the state, as documented during an investigation conducted on February 17, 2010. Specifically, a 1,000 gallon above ground diesel storage tank located approximately 40 feet from a water well was not identified as a potential pollutant source and was not equipped with a secondary containment structure.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				
	Potential		x		Percent 10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed protective levels as a result of this violation.				

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty \$2,000

Two quarterly events are recommended from the investigation date (February 17, 2010) to the screening date (June 4, 2010).

Good Faith Efforts to Comply Reduction

		Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
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 **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Rene Coumans dba Belle Vue Dairy
Case ID No. 39809
Reg. Ent. Reference No. RN102887031
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	\$5,000	17-Feb-2010	12-Jan-2011	0.90	\$15	\$300	\$315
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to construct a secondary containment structure for the above ground diesel storage tank. Date required is the investigation date. Final date is the expected date of compliance.

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

\$5,000

TOTAL

\$315

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601463854 COUMANS, RENE	Classification: AVERAGE	Rating: 4.60
Regulated Entity:	RN102887031 BELLE VUE DAIRY	Classification: AVERAGE	Site Rating: 3.17
ID Number(s):	WASTEWATER AGRICULTURE PERMIT		TXG920089
Location:	Nine mi. SE of Sulphur Springs, on east side of CR 1567, Hopkins Co, Tx		
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	June 01, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 01, 2005 to June 01, 2010		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Evette Alvarado</u>	Phone:	<u>512 - 239 - 2573</u>

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: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A
- B. Any criminal convictions of the state of Texas and the federal government.

N/A
- C. Chronic excessive emissions events.

N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/15/2006	(463030)	
2	07/13/2007	(566492)	
3	05/28/2008	(670948)	
4	08/04/2009	(764174)	
5	11/16/2009	(779592)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

1	Date:	05/14/2007	(557943)	CN601463854	
	Self Report?	NO		Classification:	Moderate
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 321, SubChapter B 321.31(a) Part V.B. PERMIT				
	Description: Failure to prevent the unauthorized discharge of wastewater from the operations of a Concentrated Animal Feeding Operation into or adjacent to waters in the State.				
	Self Report?	NO		Classification:	Moderate
	Citation: 30 TAC Chapter 321, SubChapter B 321.36(l) Part III.A.10.(c) PERMIT				
	Description: Failure to properly dispose of dead cattle.				
2	Date:	06/08/2007	(561748)	CN601463854	
	Self Report?	NO		Classification:	Moderate
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 321, SubChapter B 321.31(a) V.B. PERMIT				
	Description: Failure to prevent the unauthorized discharge of wastewater from the waste application field of a Concentrated Animal Feeding Operation into waters in the State.				

3	Date: 07/21/2007	(566492)	CN601463854	
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 321, SubChapter B 321.36(l) Part III.A.10.(c) PERMIT		
	Description:	Failure to properly dispose of dead cattle.		
4	Date: 09/04/2007	(571908)	CN601463854	
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 321, SubChapter B 321.38(h) Part III. A.8.(b) PERMIT		
	Description:	Failure to provide adequate runoff control measures for the waste storage area.		
5	Date: 08/06/2009	(764174)	CN601463854	
	Self Report?	NO	Classification:	Minor
	Citation:	30 TAC Chapter 321, SubChapter B 321.46(a)(6) TXG920000 Part III.A.4(a) PERMIT		
	Description:	Failure to identify and implement measures that will be used to prevent contamination to water in the state.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 321, SubChapter B 321.38(g)(3)(E) TXG920000 Part III.A.6(a)(2) PERMIT		
	Description:	Failure to provide liner and capacity certifications, certified by a licensed Texas professional engineer, for each retention control structure.		

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
ENFORCEMENT ACTION
CONCERNING
RENE COUMANS DBA
BELLE VUE DAIRY;
RN102887031**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0913-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Rene Coumans DBA Belle Vue Dairy ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owned and operated a dairy located nine miles southeast of Sulphur Springs, on the east side of County Road 1567 in Hopkins County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of four thousand seven hundred thirty dollars (\$4,730.00) is assessed by the Commission in settlement of the violations alleged in Section II. On or about October 25, 2010, Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 USC § 101(27)) is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to

- liquidate its damages for such violations. So long as the Respondent's bankruptcy proceedings are pending and/or until relief from the automatic stay is granted, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Respondent's bankruptcy case is pending as necessary, after consultation with the Office of the Attorney General of the State of Texas ("OAG").
6. 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.
 7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
 8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. By February 17, 2010, ceased the discharge of wastewater from the Facility and repaired the damaged transfer hose;
 - b. By February 23, 2010, constructed a diversion dam to route future wastewater discharges into retention control structure ("RCS") No. 3; and
 - c. On October 25, 2010, Respondent filed a petition for bankruptcy relief. The Facility is no longer in operation.
 9. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that 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

1. During an investigation conducted on February 3, 2010, through February 17, 2010, a TCEQ Tyler Regional Office investigator documented that Respondent violated:
 - a. TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.31(a) and 321.37(d), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920089, Part III.A.5(a)(1), by failing to prevent a discharge of wastewater from a concentrated animal feeding operation ("CAFO") production area into or adjacent to water in the state. Specifically, agricultural wastewater from the Facility discharged into Carroll Creek from a broken hose used to transport wastewater from RCS No. 3 to a flush tank; and

- b. 30 TEX. ADMIN. CODE § 321.46(a)(1) and (6) and TPDES General Permit No. TXG920089, Part III.A.1(a) and Part III.A.4(a) by failing to identify and implement measures used to prevent contamination to water in the state. Specifically, a 1,000 gallon above-ground diesel storage tank located approximately 40 feet from a water well was not identified as a potential pollutant source and was not equipped with a secondary containment structure.
2. Respondent received notice of the violations on or about May 19, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent be assessed an administrative penalty as set forth in Section I, Paragraph No. 5. The assessment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here.
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Accordingly, Respondent is ordered to give notice of this Order to his bankruptcy attorney, Robert T. DeMarco, DeMarco—Mitchell PLLC.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Rene Coumans DBA Belle Vue Dairy
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

6/10/2011

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Rene Coumans DBA Belle Vue Dairy, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Signature

[Handwritten Signature]
[Handwritten Signature]

Rene Coumans, Owner/Operator
Belle Vue Dairy

3/24/11

Date