

Executive Summary – Enforcement Matter – Case No. 15009
Magnum Blue Ribbon Feeds, Inc.
RN101925196
Docket No. 2011-1080-AIR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Holly Sugar Plant, 3510 United States Highway 385, Hereford, Deaf Smith County

Type of Operation:

Cattle feed supplement production plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 2, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$12,100

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,100

Total Due to General Revenue: \$11,000

Payment Plan: 11 payments of \$1,000 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Poor

Site/RN - Poor

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 15009
Magnum Blue Ribbon Feeds, Inc.
RN101925196
Docket No. 2011-1080-AIR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 13, 2011
Date(s) of NOE(s): June 2, 2011

Violation Information

1. Failed to comply with the visible emissions opacity limit of 20% and the Permit By Rule Registration No. 37018 opacity limit of 5% [30 TEX. ADMIN. CODE §§ 106.147(a)(1)(B) and 111.111(a)(1)(B), Permit by Rule Registration No. 37018, Agreed Order Docket No. 2009-1113-AIR-E Ordering Provisions No. 2.a., and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to take adequate measures to achieve maximum control of sand and dust emissions [30 TEX. ADMIN. CODE §§ 106.144(2) and 106.147(4), Permit by Rule Registration No. 37018, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 60 days, submit a written compliance plan that demonstrates corrective actions will result in compliance with visible emissions opacity limits and adequate measures will be taken to achieve maximum control of sand and dust emissions from the Plant;
- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the written compliance plan within 30 days after the date of such requests, or by any other deadline specified in writing; and
- c. Within 180 days, submit written certification demonstrating compliance with visible emissions opacity limits and adequate measures have been taken to achieve maximum control of sand and dust emissions from the Plant.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A

**Executive Summary – Enforcement Matter – Case No. 15009
Magnum Blue Ribbon Feeds, Inc.
RN101925196
Docket No. 2011-1080-AIR-E**

Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: James Nolan, Enforcement Division,
Enforcement Team 4, MC 149, (512) 239-6634; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412.

TCEQ SEP Coordinator: N/A

Respondent: Timothy A. Gearn, Owner, Magnum Blue Ribbon Feeds, Inc., 3510
United States Highway 385, Hereford, Texas 79045

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jun-2011	Screening	16-Jun-2011	EPA Due	
	PCW	4-Aug-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Magnum Blue Ribbon Feeds, Inc.
Reg. Ent. Ref. No.	RN101925196
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	15009	Order Type	Findings
Docket No.	2011-1080-AIR-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	James Nolan
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,000
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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	65.0% Enhancement	Subtotals 2, 3, & 7	\$3,900
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Notes: Enhancement for two NOVs with same/similar violations, one order with denial of liability, one order without denial of liability, and classification as a poor performer.

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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Approx. Total EB Amounts \$2,361
 Approx. Cost of Compliance \$6,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	22.2%	Adjustment	\$2,200
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Avoided costs associated with Violation No. 1.

Final Penalty Amount	\$12,100
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,100
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DEFERRAL	0.0% 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: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$12,100
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Screening Date 16-Jun-2011

Docket No. 2011-1080-AIR-E

PCW

Respondent Magnum Blue Ribbon Feeds, Inc.

Policy Revision 2 (September 2002)

Case ID No. 15009

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101925196

Media [Statute] Air

Enf. Coordinator James Nolan

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>)	2	10%
	Other written NOVs	0	0%
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	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 (<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) 55%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations, one order with denial of liability, one order without denial of liability, and classification as a poor performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date 16-Jun-2011

Docket No. 2011-1080-AIR-E

PCW

Respondent Magnum Blue Ribbon Feeds, Inc.

Policy Revision 2 (September 2002)

Case ID No. 15009

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101925196

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 106.147(a)(1)(B) and 111.111(a)(1)(B), Permit by Rule Registration No. 37018, Agreed Order Docket No. 2009-1113-AIR-E Ordering Provisions No. 2.a., and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to comply with the visible emissions opacity limit of 20% and the Permit By Rule Registration No. 37018 opacity limit of 5%. Specifically, during an investigation conducted on May 13, 2011, an opacity observation beginning at 11:12 am and ending at 11:24 am documented an average opacity of 61.77%.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 5 Number of violation days 431

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Five quarterly events are recommended from the effective date of Agreed Order Docket No. 2009-1113-AIR-E (April 11, 2010) through the date of case screening (June 16, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,281

Violation Final Penalty Total \$10,083

This violation Final Assessed Penalty (adjusted for limits) \$10,083

Economic Benefit Worksheet

Respondent Magnum Blue Ribbon Feeds, Inc.
Case ID No. 15009
Reg. Ent. Reference No. RN101925196
Media Air
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)	\$2,000	13-May-2011	2-Mar-2012	0.81	\$81	n/a	\$81

Notes for DELAYED costs

Estimated costs for implementing measures and/or installing equipment that will ensure that the Plant can comply with the allowable opacity limit of 5%. The date required is the date of investigation and the final date is the estimated 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)	\$2,000	11-Apr-2010	12-May-2011	2.00	\$200	\$2,000	\$2,200

Notes for AVOIDED costs

Estimated costs for implementing measures and/or installing equipment that will ensure that the Plant can comply with the allowable opacity limit of 5%. The date required is the effective date of Agreed Order Docket No. 2009-1113-AIR-E and the final date is the day prior to the date of investigation.

Approx. Cost of Compliance

\$4,000

TOTAL

\$2,281

Screening Date 16-Jun-2011

Docket No. 2011-1080-AIR-E

PCW

Respondent Magnum Blue Ribbon Feeds, Inc.

Policy Revision 2 (September 2002)

Case ID No. 15009

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101925196

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 106.144(2) and 106.147(4), Permit by Rule Registration No. 37018, and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to take adequate measures to achieve maximum control of sand and dust emissions. Specifically, the Respondent's roads and work areas were not watered, treated with dust-suppressant chemicals, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment was exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

34 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the date of investigation (May 13, 2011) through the date of case screening (June 16, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$81

Violation Final Penalty Total \$2,017

This violation Final Assessed Penalty (adjusted for limits) \$2,017

Economic Benefit Worksheet

Respondent Magnum Blue Ribbon Feeds, Inc.
Case ID No. 15009
Reg. Ent. Reference No. RN101925196
Media Air
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
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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	\$1,000	13-May-2011	2-Mar-2012	0.81	\$40	n/a	\$40
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	13-May-2011	2-Mar-2012	0.81	\$40	n/a	\$40

Notes for DELAYED costs

Estimated costs to implement measures at the Plant in order to achieve maximum control of dust emissions. The date required is the date of the investigation, and the final date is the projected 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

\$2,000

TOTAL

\$81

Citation: 30 TAC Chapter 101, SubChapter A 101.4
 Description: Failed to control dirt/dust in and around the plant site. That dirt/dust created conditions which would constitute a violation in accordance with Title 30 of the Texas Administrative Code (TAC) Chapter 101, Rule 101.4. This was confirmed at the complainant's property closest to the facility.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter E 106.144(2)
 30 TAC Chapter 106, SubChapter E 106.147(4)
 30 TAC Chapter 116, SubChapter B 116.115(c)

Description: Failed to comply with their Permit By Rule (PBR) 30 TAC §106.144(2) and 30 TAC §106.147(4), Registration Number 37018, when they failed to comply with the provisions that states that "all permanent in-plants roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions coming off of work areas and vehicle work areas".

Date 11/23/2010 (878828) CN601051337

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 106, SubChapter E 106.147(a)(1)(B)
 30 TAC Chapter 111, SubChapter A 111.111(a)(1)(B)
 5C THSC Chapter 382 382.085(b)

Description: Failed to comply with their Permit By Rule (PBR) opacity limit of 5%. This is in violation of 30 TAC 106.147(a)(1)(B), per registration number: 37018, thus violating the provisions defined in the PBR per 30 TAC 116.115(c). Failed to comply with Commission Order No. 2007-0680-AIR-E.

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
MAGNUM BLUE RIBBON FEEDS,
INC.
RN101925196**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-1080-AIR-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Magnum Blue Ribbon Feeds, Inc. (“the Respondent”) under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a cattle feed supplement production plant at 3510 United States Highway 385 in Hereford, Deaf Smith County, Texas (the “Plant”).

2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation on May 13, 2011, TCEQ staff documented that the Respondent failed to comply with the visible emissions opacity limit of 20% and the Permit By Rule Registration No. 37018 opacity limit of 5%. Specifically, an opacity observation beginning at 11:12 am and ending at 11:24 am documented an average opacity of 61.77%.
4. During an investigation on May 13, 2011, TCEQ staff documented that the Respondent failed to take adequate measures to achieve maximum control of sand and dust emissions. Specifically, the Respondent's roads and work areas were not watered, treated with dust-suppressant chemicals, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions.
5. The Respondent received notice of the violations on June 7, 2011.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with the visible emissions opacity limit of 20% and the Permit By Rule Registration No. 37018 opacity limit of 5%, in violation of 30 TEX. ADMIN. CODE §§ 106.147(a)(1)(B) and 111.111(a)(1)(B), Permit by Rule Registration No. 37018, Agreed Order Docket No. 2009-1113-AIR-E Ordering Provisions No. 2.a., and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to take adequate measures to achieve maximum control of sand and dust emissions, in violation of 30 TEX. ADMIN. CODE §§ 106.144(2) and 106.147(4), Permit by Rule Registration No. 37018, and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Twelve Thousand One Hundred Dollars (\$12,100) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid One Thousand One Hundred Dollars (\$1,100) of the administrative penalty. The remaining amount of Eleven Thousand Dollars (\$11,000) of the administrative penalty shall be payable in eleven monthly payments of One Thousand Dollars (\$1,000) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive

Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Twelve Thousand One Hundred Dollars (\$12,100) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Magnum Blue Ribbon Feeds, Inc., Docket No. 2011-1080-AIR-E" to:

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

2. The Respondent shall undertake the following technical requirements:

- a. Within 60 days after the effective date of this Agreed Order, submit a written compliance plan that demonstrates corrective actions will result in compliance with visible emissions opacity limits and adequate measures will be taken to achieve maximum control of sand and dust emissions from the Plant to:

Air Section, Manager
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

with a copy to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the written compliance plan within 30 days after the date of such requests, or by any other deadline specified in writing; and
- c. Within 180 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with visible emissions opacity limits and adequate measures have been taken to achieve maximum control of sand and dust emissions from the Plant. 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:

Air Section, Manager
Amarillo Regional Office
Texas Commission on Environmental Quality
3918 Canyon Drive
Amarillo, Texas 79109-4933

- 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 Plant 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. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Donna Q For P. Hyde
For the Executive Director

12-19-11
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Magnum Blue Ribbon Feeds, Inc. I am authorized to agree to the attached Agreed Order on behalf of Magnum Blue Ribbon Feeds, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Magnum Blue Ribbon Feeds, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Timothy A. Bearn
Signature

Nov 1, 2011
Date

TIMOTHY A. BEARN
Name (Printed or typed)
Authorized Representative of
Magnum Blue Ribbon Feeds, Inc.

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.