

Executive Summary – Enforcement Matter – Case No. 41889
Cargill Meat Solutions Corporation
RN101634368
Docket No. 2011-1347-IWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Cargill Meat Solutions Plainview, located immediately northeast of the intersection of Interstate Highway 27 and Farm-to-Market Road 3183, approximately 1.5 miles north of Plainview, Hale County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket No. 2011-0650-AIR-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 27, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$12,700

Amount Deferred for Expedited Settlement: \$2,540

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$10,160

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

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

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Cargill Meat Solutions Corporation
RN101634368
Docket No. 2011-1347-IWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: July 21, 2011
Date(s) of NOE(s): August 5, 2011

Violation Information

Failed to comply with its permitted nitrogen loading rates. Specifically, the March 2011 monitoring report shows that a total of 329.71 pounds per acre (“lbs/acre”) of nitrogen were applied to the wheat crop (100.71 lbs/acre at the Freese Pivot and 229 lbs/acre at the Hays Pivot), exceeding the permit limit of 100 lbs/acre. Additionally, the April 2011 monitoring report shows that 523.6 lbs/acre of nitrogen were applied to the alfalfa crop at the Southwest Cotton No. 3 Pivot, exceeding the permit limit of 400 lbs/acre [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ00001463000, Permit Conditions IV. and Special Provisions V.C.10].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On August 18, 2011, the Respondent submitted an application for an amendment to TCEQ Permit No. WQ00001463000 which included an irrigation plan and an agronomic management plan.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 15 days, begin conducting groundwater monitoring of all wells;
- b. Within 30 days, or by any other deadline specified in writing, respond completely and adequately to all TCEQ requests for additional information regarding the permit amendment application, the irrigation plan, or the agronomic management plan;
- c. Within 60 days, submit a report including results and discussion of groundwater gradients and groundwater samples taken at or in close proximity to the Facility to establish background concentrations of nitrates in groundwater and to determine if a release from the Facility to groundwater has occurred. The report shall include a comparison of the established background concentrations to the nitrate concentrations reported to the TCEQ for the monitoring wells and a comparison between nitrate concentrations of the monitoring wells and the critical protective concentration level established. Background shall be defined in accordance with 30 TEX. ADMIN. CODE § 350.4(a)(6);
- d. Upon approval by TCEQ of the plans, implement the plan according to the approved schedule;

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- e. Within 90 days, and on a quarterly basis thereafter, until certification of compliance with the nitrogen loading rates is submitted, submit a quarterly progress report describing the steps taken to reduce the nitrogen loading to the wastewater treatment system, optimize the efficiency of the wastewater treatment system, reduce the volume of water going to the wastewater treatment system, and achieve compliance with the nitrogen application rates specified in TCEQ Permit No. WQ00001463000, as well as the current status of the irrigation plan and the agronomic management plan and the results of the quarterly well sample analyses required in TCEQ Permit No. WQ00001463000, Special Provision c. Copies of any plans pertaining to land application approved during the current quarter should be included with the report; and
- f. Within 365 days, submit written certification of compliance with the nitrogen loading rates of TCEQ Permit No. WQ00001436000, including specific corrective actions that were implemented at the Facility to achieve compliance and nitrogen loading calculations, laboratory data, and total acreage of each crop demonstrating compliance with permitted application rates for the crops planted or harvested in the current growing season.

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Jim Rathke, General Manager & Vice President, Cargill Meat Solutions Corporation, P.O. Box 910, Plainview, Texas 79073
Respondent's Attorney: Steve Morton, Attorney, Moltz Morton O'Toole LLP, 106 East 6th Street, Suite 700, Austin, Texas 78701



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ DATES	Assigned	28-Jul-2011	Screening	28-Jul-2011	EPA Due	
	PCW	4-Aug-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Cargill Meat Solutions Corporation		
Reg. Ent. Ref. No.	RN101634368		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41889	No. of Violations	1
Docket No.	2011-1347-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$14,767	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$110,000	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 28-Jul-2011

Docket No. 2011-1347-IWD-E

PCW

Respondent Cargill Meat Solutions Corporation

Policy Revision 2 (September 2002)

Case ID No. 41889

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101634368

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

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>)	3	15%
	Other written NOVs	6	12%
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%

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) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for three NOVs with same/similar violations, and six NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 28-Jul-2011

Docket No. 2011-1347-IWD-E

PCW

Respondent Cargill Meat Solutions Corporation

Policy Revision 2 (September 2002)

Case ID No. 41889

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101634368

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Commission on Environmental Quality Permit No. WQ00001463000, Permit Conditions IV. and Special Provisions V.C.10

Violation Description Failed to comply with permitted nitrogen loading rates. Specifically, the March 2011 monitoring report shows that a total of 329.71 pounds per acre ("lbs/acre") of nitrogen was applied to the wheat crop (100.71 lbs/acre at the Freese Pivot and 229 lbs/acre at the Hays Pivot), exceeding the permit limit of 100 lbs/acre. Additionally, the April 2011 monitoring report shows that 523.6 lbs/acre of nitrogen was applied to the alfalfa crop at the Southwest Cotton No. 3 Pivot, exceeding the permit limit of 400 lbs/acre.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 Number of violation days 119

Table for frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$10,000

Four monthly events are recommended from the first documented violation date (March 31, 2011) to the screening date (July 28, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x), Notes.

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

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14,767

Violation Final Penalty Total \$12,700

This violation Final Assessed Penalty (adjusted for limits) \$12,700

Economic Benefit Worksheet

Respondent Cargill Meat Solutions Corporation
Case ID No. 41889
Reg. Ent. Reference No. RN101634368
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	\$110,000	31-Mar-2011	28-Feb-2013	1.92	\$703	\$14,064	\$14,767
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 for the pipeline and labor to bring the wastewater to additional land application sites and the modification of treatment units to decrease the nitrogen content of the wastewater. Date required is the first month of noncompliance and the final date is the date compliance is expected to be achieved.

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

\$110,000

TOTAL

\$14,767

Compliance History

Customer/Respondent/Owner-Operator: CN602700668 Cargill Meat Solutions Corporation Classification: AVERAGE Rating: 5.54

Regulated Entity: RN101634368 CARGILL MEAT SOLUTIONS Classification: AVERAGE Site Rating: 1.64
PLAINVIEW

ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD071663611
INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # 31431
(SWR)
POLLUTION PREVENTION PLANNING ID NUMBER P00228
PETROLEUM STORAGE TANK REGISTRATION 32983
REGISTRATION
AIR NEW SOURCE PERMITS PERMIT 4844
AIR NEW SOURCE PERMITS REGISTRATION 14369
AIR NEW SOURCE PERMITS ACCOUNT NUMBER HA0048I
AIR NEW SOURCE PERMITS AFS NUM 4818900022
AIR NEW SOURCE PERMITS REGISTRATION 54795
AIR NEW SOURCE PERMITS REGISTRATION 50573
WASTEWATER PERMIT WQ00001463000
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0950017
AIR OPERATING PERMITS PERMIT 2612
AIR OPERATING PERMITS ACCOUNT NUMBER HA0048I
AIR EMISSIONS INVENTORY ACCOUNT NUMBER HA0048I

Location: NE OF INTERSEC. OF IH27 AND FM 3138, APPROX. 1.5 MI.
N. OF PLAINVIEW, HALE CO., TX

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: August 03, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 03, 2006 to August 03, 2011

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

Name: Merrilee Hupp Phone: (512) 239 - 4490

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? Yes
3. If Yes, who is the current owner/operator? OPR Cargill Meat Solutions Corporation
OWNOPR
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR Excel Corporation
5. When did the change(s) in owner or operator occur? 02/15/2008 OWNOPR Excel Corporation
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.
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 08/28/2006 (510088)
- 2 02/05/2007 (536119)
- 3 02/13/2007 (540266)

4	10/23/2007	(596667)
5	01/11/2008	(611699)
6	01/30/2008	(614684)
7	05/08/2008	(656973)
8	07/16/2008	(684047)
9	08/21/2008	(689606)
10	09/09/2008	(702404)
11	11/13/2008	(707114)
12	11/26/2008	(709280)
13	05/18/2009	(744647)
14	05/18/2009	(744838)
15	06/12/2009	(749146)
16	12/07/2009	(780947)
17	01/26/2010	(786997)
18	01/22/2010	(789052)
19	03/02/2010	(794229)
20	03/10/2010	(794562)
21	07/01/2010	(828942)
22	02/02/2011	(892091)
23	04/14/2011	(908811)
24	04/11/2011	(911876)
25	06/03/2011	(933879)

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

Date: 02/05/2007 (536119) CN602700668
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
 FOP O-02612 SC No. 8 OP
 Description: The Regulated Entity failed to submit the PCC 30 days after the end of the compliance period, an alleged violation of 30 TAC §122.146(2)/FOP O-02612 SC No. 8.

Date: 01/14/2008 (611699) CN602700668
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 4844 SC 10.B.2. PERMIT
 O-02612 SC No. 5. OP
 Description: The Regulated Entity failed to maintain the pH in the scrubber solution at the minimum pH of 11, an alleged violation of Permit No. 4844 SC 10.B.2, and Permit No. O-02612 SC No. 5, and 30 TAC 116.115(c).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
 4844 SC 10.H.2. PERMIT
 O-02612 SC No. 5. OP
 Description: The Regulated Entity failed to operate the flare with a flame present at all times, an alleged violation of this SC 10.H.2, Permit No. O-02612 SC No. 5, and 30 TAC 116.115(c).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 Description: The Regulated Entity failed to include all instances of deviations on the annual permit compliance certification, an alleged violation of 30 TAC 122.145(2)(A).

Date: 07/17/2008 (684047) CN602700668
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 WQ0001463000 PERMIT
 Description: Failure to maintain pH levels of treated wastewater between the permit authorized 6.0 su and 9.0 su.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

WQ0001463000 PERMIT
 Description: Failure to maintain a minimum of two (2) feet of freeboard around the wastewater holding ponds at all times.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 WQ0001463000 PERMIT
 Description: Failure to avoid application of treated wastewater to uncultivated land.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 WQ0001463000 PERMIT
 Description: Failure to keep nitrogen loading rates below the permit allowable for the duration of the respective growing season.
 Date 09/11/2008 (702404) CN602700668
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 WQ0001463000 PERMIT
 Description: Failure to maintain pH levels of treated wastewater between the permit authorized 6.0 su and 9.0 su.
 Date 02/10/2009 (723704) CN602700668
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
 5C THSC Chapter 382 382.085(b)
 O2612 OP
 Description: Failure to submit the PCC within 30 days after the end of the compliance period, an alleged violation of 30 TAC §122.146(2), SOP No. O-2612 STC No. 8, and 5C THSC §382.085(b).
 Date 05/19/2009 (744647) CN602700668
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)
 30 TAC Chapter 290, SubChapter D 290.44(h)(3)
 Description: Failure to provide backflow prevention on the overhead bulk feed station located at well #6 and at the fire protection booster station.
 Date 12/08/2009 (780947) CN602700668
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 TWC Chapter 26 26.121
 VI. Standard Provisions B. 1. PERMIT
 Description: Failure to prevent unauthorized discharges of untreated or inadequately treated wastewater. Unauthorized discharges occurred 6/19/2008, 6/23/2008, 01/26/2009, 6/02/2009, and 8/10/2009. Notification of these discharges was properly submitted and the cause of each discharge was properly corrected to prevent future incidents.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Section IV - Quality PERMIT
 Description: Failure to meet the permit flow requirement regarding the limit of 30,000 gallon daily maximum of effluent routed from the hide processing area to the evaporation pond. On 10/29/2008 the maximum flow was recorded to be 39,000 gallons. On 12/04/2008 the maximum flow was recorded to be 32,000 gallons.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Section IV - Application Rates PERMIT
 Section V - Special Provision C (10) PERMIT
 Description: Failure to ensure the application of wastewater below the permitted nitrogen loading rate.
 Date 01/26/2010 (786997) CN602700668
 Self Report? NO Classification: Minor
 Citation: 02612, ST and C No. 8 OP
 30 TAC Chapter 122, SubChapter B 122.146(2)
 5C THSC Chapter 382 382.085(b)
 Description: The RE failed to submit the PCC within 30 days after the end of the compliance period an alleged violation of 30 TAC §122.146(2), SOP No. O-2612 Special Terms and Conditions No. 8, and 5C THSC §382.085(b).
 Date 04/15/2011 (908811) CN602700668

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)
5C THSC Chapter 382 382.085(b)
Special Condition No. 13.F. PERMIT

Description: Failure to submit the performance stack test for Boiler No. 7 to the TCEQ Lubbock Region office within 60 days after completion of the test.

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.

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CARGILL MEAT SOLUTIONS
CORPORATION
RN101634368

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2011-1347-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 Cargill Meat Solutions Corporation ("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, represented by Steve Morton of the law firm of Moltz Morton O'Toole LLP, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located immediately northeast of the intersection of Interstate Highway 27 and Farm-to-Market Road 3183, approximately 1.5 miles north of Plainview in Hale 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 September 20, 2011.
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 Twelve Thousand Seven Hundred Dollars (\$12,700) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Ten Thousand One Hundred Sixty Dollars (\$10,160) of the administrative penalty and Two Thousand Five Hundred Forty Dollars (\$2,540) 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 on August 18, 2011, the Respondent submitted an application for an amendment to TCEQ Permit No. WQ00001463000 which included an irrigation plan and an agronomic management plan.
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 failed to comply with its permitted nitrogen loading rates, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ00001463000, Permit Conditions IV. and Special Provisions V.C.10, as documented during a record review conducted on July 21, 2011. Specifically, the March 2011 monitoring report shows that a total of 329.71 pounds per acre ("lbs/acre") of nitrogen were applied to the wheat crop (100.71 lbs/acre at the Freese Pivot and 229 lbs/acre at the Hays Pivot), exceeding the permit limit of 100 lbs/acre. Additionally, the April 2011 monitoring report shows that 523.6 lbs/acre of nitrogen were applied to the alfalfa crop at the Southwest Cotton No. 3 Pivot, exceeding the permit limit of 400 lbs/acre.

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: Cargill Meat Solutions Corporation, Docket No. 2011-1347-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 15 days after the effective date of this Agreed Order, begin conducting groundwater monitoring of all wells in accordance with TCEQ Permit No. WQ00001463000, Special Provisions No. 3.c;
- b. Within 30 days after the effective date of this Agreed Order, or by any other deadline specified in writing, respond completely and adequately to all TCEQ requests for additional information regarding the permit amendment application, the irrigation plan, or the agronomic management plan;
- c. Within 60 days after the effective date of this Agreed Order, submit a report including results and discussion of groundwater gradients and groundwater samples taken at or in close proximity to the Facility to establish background concentrations of nitrates in groundwater and to determine if a release from the Facility to groundwater has occurred. The report shall include a comparison of the established background concentrations to the nitrate concentrations reported to the TCEQ for the monitoring wells and a comparison in accordance with 30 TEX. ADMIN. CODE § 350.79 between nitrate concentrations of the monitoring wells and the critical protective concentration level established in accordance with 30 TEX. ADMIN. CODE § 350.78(c). Background shall be defined in accordance with 30 TEX. ADMIN. CODE § 350.4(a)(6). The report shall be submitted to:

Remediation Division
Voluntary Cleanup Program/Corrective Action Section, MC-127
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

- d. Upon approval by TCEQ of the plans described in Ordering Provision No. 2.b, implement the plan according to the approved schedule;

- e. Within 90 days after the effective date of this Agreed Order, and on a quarterly basis thereafter, until certification of compliance with the nitrogen loading rates is submitted as required in Ordering Provision No. 2.f below, submit a quarterly progress report describing the steps taken to reduce the nitrogen loading to the wastewater treatment system, optimize the efficiency of the wastewater treatment system, reduce the volume of water going to the wastewater treatment system, and achieve compliance with the nitrogen application rates specified in TCEQ Permit No. WQ00001463000, as well as the current status of the irrigation plan and the agronomic management plan and the results of the quarterly well sample analyses required in TCEQ Permit No. WQ00001463000, Special Provisions No. 3.c. Copies of any plans pertaining to land application approved during the current quarter should be included with the report. Quarterly reports shall be submitted to the addresses in Ordering Provision No. 2.g below;
- f. Within 365 days after the effective date of this Agreed Order, submit written certification of compliance with the nitrogen loading rates of TCEQ Permit No. WQ00001436000, including specific corrective actions that were implemented at the Facility to achieve compliance and nitrogen loading calculations, laboratory data, and total acreage of each crop demonstrating compliance with permitted application rates for the crops planted or harvested in the current growing season. The certification shall be in accordance with Ordering Provision No. 2.g below; and
- g. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.d and 2.f. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

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



For the Executive Director

2/22/12

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

11-14-11

Date

Jim Rathke

Name (Printed or typed)
Authorized Representative of
Cargill Meat Solutions Corporation

G.M. & U.P.

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.