

Executive Summary – Enforcement Matter – Case No. 45144
EDDY PACKING CO., INC.
RN102496007
Docket No. 2012-2018-WQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Eddy Packing Company, 404 Airport Drive, Yoakum, Lavaca County

Type of Operation:

Meat processing facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: January 18, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$17,387

Amount Deferred for Expedited Settlement: \$3,477

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$13,910

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 2011

**Executive Summary – Enforcement Matter – Case No. 45144
EDDY PACKING CO., INC.
RN102496007
Docket No. 2012-2018-WQ-E**

Investigation Information

Complaint Date(s): April 11, 2012 and May 14, 2012

Complaint Information: The complainant alleged that Respondent periodically discharges bright green water from on-site irrigation ponds into Supplejack Creek and alleged that rinse water from the truck washing area had been transported offsite.

Date(s) of Investigation: April 30, 2012 and July 30, 2012

Date(s) of NOE(s): August 14, 2012

Violation Information

1. Failed to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state. Specifically, on April 30, 2012, bright green water was flowing through a breach in the berm of one of the tailwater ponds towards Supplejack Creek [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN CODE § 321.57].

2. Failed to design and operate a holding facility to retain all wastewater produced by the meat processing operation for a 30-day period, plus all rainwater which would enter the holding facilities as a result of a 25-year, 24-hour rainfall as defined by Hershfield, Rainfall Frequency Atlas of the United States ("U.S."), U.S. Weather Bureau, Technical Paper No. 40, 1961, or the latest revision thereof. Specifically, correspondence from the Facility indicated that an additional 1.6 million gallons of holding pond capacity would be required to meet the requirements of 30 TEX. ADMIN CODE § 321.54(1)(A) [30 TEX. ADMIN CODE § 321.54(1)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

- a. Immediately, cease the unauthorized discharge of industrial waste into or adjacent to water in the state;
- b. Within 15 days, submit written certification of compliance with Ordering Provision a.;
- c. Within 30 days, submit written certification demonstrating that the existing holding ponds at the Facility have been permanently removed; that an irrigation facility of adequate capacity to dewater all wastewater holding facilities within a 14-day period has been implemented; and irrigation is being conducted.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

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RN102496007
Docket No. 2012-2018-WQ-E

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Don Burrows, Vice President of Operations, EDDY PACKING CO., INC.,
P.O. Box 392, Yoakum, Texas 77995
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ DATES	Assigned	20-Aug-2012	Screening	29-Aug-2012	EPA Due	
	PCW	14-Sep-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	EDDY PACKING CO., INC.		
Reg. Ent. Ref. No.	RN102496007		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	45144	No. of Violations	2
Docket No.	2012-2018-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$16,250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.
Compliance History 7.0% Enhancement **Subtotals 2, 3, & 7** **\$1,137**

Notes: Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts \$4,991
 Approx. Cost of Compliance \$75,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$17,387**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** **\$0**
 Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$17,387**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$17,387**

DEFERRAL 20.0% Reduction **Adjustment** **-\$3,477**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$13,910**

Screening Date 29-Aug-2012

Docket No. 2012-2018-WQ-E

PCW

Respondent EDDY PACKING CO., INC.

Policy Revision 3 (September 2011)

Case ID No. 45144

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102496007

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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>)	1	5%
	Other written NOVs	1	2%
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) 7%

>> **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 one NOV with same/similar violations and one NOV with dissimilar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 7%

Screening Date 29-Aug-2012

Docket No. 2012-2018-WQ-E

PCW

Respondent EDDY PACKING CO., INC.

Policy Revision 3 (September 2011)

Case ID No. 45144

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102496007

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin Code § 321.57

Violation Description Failed to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state, as documented during an investigation conducted April 30, 2012, through May 11, 2012. Specifically, on April 30, 2012, bright green water was flowing through a breach in the berm of one of the tailwater ponds towards Supplejack Creek.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 4 Number of violation days 121

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

Violation Base Penalty \$15,000

Four monthly events are recommended from the date the discharge was documented (April 30, 2012) to the screening date (August 29, 2012).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,991

Violation Final Penalty Total \$16,050

This violation Final Assessed Penalty (adjusted for limits) \$16,050

Economic Benefit Worksheet

Respondent EDDY PACKING CO., INC.

Case ID No. 45144

Reg. Ent. Reference No. RN102496007

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
<small>No commas or \$</small>							

Delayed Costs

Equipment	\$50,000	30-Apr-2012	12-Apr-2013	0.95	\$158	\$3,169	\$3,327
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$25,000	30-Apr-2012	12-Apr-2013	0.95	\$79	\$1,584	\$1,664
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 costs to purchase and install a pivot irrigation system and to fill-in the existing holding ponds to prevent future discharges from the Facility. Date required is the date the violation was documented. 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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$75,000

TOTAL

\$4,991

Screening Date 29-Aug-2012

Docket No. 2012-2018-WQ-E

PCW

Respondent EDDY PACKING CO., INC.

Policy Revision 3 (September 2011)

Case ID No. 45144

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102496007

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s) 30 Tex. Admin Code § 321.54(1)(A)

Violation Description Failed to design and operate a holding facility to retain all wastewater produced by the meat processing operation for a 30-day period, plus all rainwater which would enter the holding facilities as a result of a 25-year, 24-hour rainfall as defined by Hershfield, Rainfall Frequency Atlas of the United States, U.S. Weather Bureau, Technical Paper No. 40, 1961, or the latest revision thereof, as documented during a record review conducted on July 30, 2012. Specifically, correspondence from the Facility indicated that an additional 1.6 million gallons of holding pond capacity would be required to meet the requirements of 30 Tex. Admin. Code § 321.54(1)(A).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (5.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 30

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

Violation Base Penalty \$1,250

One quarterly event is recommended from the record review date (July 30, 2012) to the screening date (August 29, 2012).

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$1,338

This violation Final Assessed Penalty (adjusted for limits) \$1,338

Economic Benefit Worksheet

Respondent EDDY PACKING CO., INC.

Case ID No. 45144

Reg. Ent. Reference No. RN102496007

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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

Economic Benefit for this violation is included with Violation No. 1.

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

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN600281752 EDDY PACKING CO., INC. Classification: AVERAGE Rating: 1.88
Regulated Entity: RN102496007 EDDY PACKING COMPANY Classification: AVERAGE Site Rating: 0.75
ID Number(s): AIR NEW SOURCE PERMITS PERMIT 2694
AIR NEW SOURCE PERMITS ACCOUNT NUMBER LE0007P
STORMWATER PERMIT TXR05V209
Location: 404 AIRPORT RD, YOAKUM, TX, 77995
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: August 29, 2012
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 29, 2007 to August 29, 2012
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lanae Foard Phone: (512) 239-2554

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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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 | 07/05/2012 | (1006414) |
| 2 | 08/02/2012 | (1022132) |
| 3 | 02/22/2008 | (612669) |
| 4 | 02/10/2010 | (789750) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|-----------|--------------------------|
| Date: | 02/10/2010 | (789750) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 321, SubChapter C 321.57
TWC Chapter 26 26.121 | | |
| Description: | Failure to prevent the unauthorized discharge of wastewater or any other waste. | | |
| Date: | 07/05/2012 | (1006414) | CN600281752 |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section B.1.(b) PERMIT | | |
| Description: | Failed to conduct a survey of potential non-stormwater sources within 180 of filing a renewal NOI. | | |

Specifically, Eddy Packing's non-stormwater survey was conducted on May 1, 2012. The renewal NOI was filed on October 5, 2011; therefore, the survey must have been conducted on or before March 26, 2012

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22(c)
Part III, Section A.4.(e)(3) PERMIT
Description: Failed to clearly label all tanks exposed to stormwater.

Specifically, during an investigation conducted on May 11, 2012, Eddy Packing had a used oil tank located in the rear of the facility's yard. The tank was not labeled and was used to store spent hydraulic fluid from the facility's packaging machinery.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section A.4 PERMIT
Description: Failed to implement all pollution prevention practices that are determined to be necessary, reasonable, and effective by the stormwater pollution prevention team.

An investigation conducted on May 11, 2012 revealed that the BMP section of the facility's SWP3 included a form to be filled out by the stormwater team to ensure that BMPs are implemented properly and functioning adequately. The form had never been filled out.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section A.4(f)(1) PERMIT
Part III, Section D.5 PERMIT
Description: Failed to maintain records required by the MSGP for a period of three (3) years.

A review of Eddy Packing's SWP3 on May 11, 2012 revealed that the SWP3 did not contain training records from 2011 and 2010.

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section A.4(f)(2) PERMIT
Description: Failed to provide training to employees not directly responsible for implementing or maintaining SWP3 activities.

An investigation conducted on May 11, 2012 revealed that the facility had not provided training to all employees regarding the basic goal of the SWP3 and how to contact the stormwater pollution prevention team regarding stormwater issues.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section B.2 PERMIT
Part III, Section B.2(a-b) PERMIT
Description: Failed to conduct routine facility inspections at least once per quarter and maintain inspection records in the SWP3

An investigation conducted on May 11, 2012 revealed that the facility was lacking routine inspection reports. Included in the SWP3 were quarterly inspection reports for 2006 and 2011. Inspection reports were not included in the SWP3 for the past three years, and facility representatives were unaware as to whether or not the inspections were conducted.

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Part III, Section B.3 PERMIT
Description: Failed to conduct quarterly visual monitoring.

An investigation conducted on May 11, 2012 revealed that the facility did not collect and examine stormwater runoff once per quarter. The facility did not document adverse conditions for any of the monitoring periods (MSGP Part III, Section D.4.(a)(1-3)).

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
EDDY PACKING CO., INC.
RN102496007**

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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2012-2018-WQ-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding EDDY PACKING CO., INC. ("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 together stipulate that:

1. The Respondent owns and operates a meat processing facility located at 404 Airport Drive in Yoakum, Lavaca 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 Executive Director 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 August 19, 2012.
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 Seventeen Thousand Three Hundred Eighty-Seven Dollars (\$17,387) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirteen Thousand Nine Hundred Ten Dollars (\$13,910) of the administrative penalty and Three Thousand Four

Hundred Seventy-Seven Dollars (\$3,477) 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 and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN CODE § 321.57, as documented during an investigation conducted April 30, 2012, through May 11, 2012. Specifically, on April 30, 2012, bright green water was flowing through a breach in the berm of one of the tailwater ponds towards Supplejack Creek.
2. Failed to design and operate a holding facility to retain all wastewater produced by the meat processing operation for a 30-day period, plus all rainwater which would enter the holding facilities as a result of a 25-year, 24-hour rainfall as defined by Hershfield, Rainfall Frequency Atlas of the United States, U.S. Weather Bureau, Technical Paper No. 40, 1961, or the latest revision thereof, in violation of 30 TEX. ADMIN CODE § 321.54(1)(A), as documented during a record review conducted on July 30, 2012. Specifically, correspondence from the Facility indicated that an additional 1.6 million gallons of holding pond capacity would be required to meet the requirements of 30 TEX. ADMIN CODE § 321.54(1)(A).

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: EDDY PACKING CO., INC., Docket No. 2012-2018-WQ-E" to:

Financial Administration Division, Revenue Operations 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. Immediately upon the effective date of this Agreed Order, cease the unauthorized discharge of industrial waste into or adjacent to water in the state;
 - b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.d below;
 - c. Within 30 days after the effective date of this Agreed Order, submit written certification in accordance with Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate that the existing holding ponds at the Facility have been permanently removed; that an irrigation facility of adequate capacity to dewater all wastewater holding facilities within a 14-day period has been implemented; and irrigation is being conducted in accordance with 30 TEX. ADMIN. CODE § 321.54; and
 - d. The certifications required by Ordering Provision Nos. 2.b and 2.c shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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

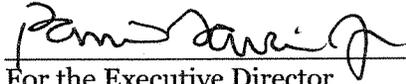
otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/18/12

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

11-16-12

Date

DON BURROWS

Name (Printed or typed)
Authorized Representative of
EDDY PACKING CO., INC.

VP OF OPS

Title

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