TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel

Thru: MBC Melissa Cordell, Assistant Deputy Director
Enforcement Division

From: MP Michael Parrish, Team Leader
Special Functions Team

Date: July 25, 2023

Subject: **Backup Revision**
August 2, 2023 Commission Agenda
Draft Item No. 9 – Nico Jaap DeBoer
Docket No. 2021-1354-MLM-E

Enclosed please find the following:

Penalty Calculation Worksheet No. 2

- Pages 1-3 , Docket Number – Corrected 2021-1351-MLM-E to 2021-1354-MLM-E

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel
Melissa Schmidt, Public Interest Counsel
Gill Valls, Office of General Counsel
Katherine McKenzie, Agenda Coordinator, Litigation Division
Amy Settemeyer, Deputy Director, Enforcement Division
Melissa Cordell, Assistant Deputy Director, Enforcement Division
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division
Kristy Deaver, Manager, Water Section, Enforcement Division
Katy Montgomery, Team Leader, Water Section, Enforcement Division

Corrected Copy

Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021) — *PCW Revision February 11, 2021*

DATES						
	Assigned	7-Sep-2021				
	PCW	28-Jan-2022	**Screening**	5-Oct-2021	**EPA Due**	

RESPONDENT/FACILITY INFORMATION

Respondent	Nico Jaap DeBoer		
Reg. Ent. Ref. No.	RN102184405		
Facility/Site Region	5-Tyler	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	61439	**No. of Violations**	1
Docket No.	2021-1354-MLM-E	**Order Type**	1660
Media Program(s)	Water Rights	**Government/Non-Profit**	No
Multi-Media	Water Quality	**Enf. Coordinator**	Alejandro Laje
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — ***Subtotal 1*** **$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **-10.0%** Adjustment — ***Subtotals 2, 3, & 7*** **-$100**

Notes: Reduction for High Performer Classification.

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 $35
Estimated Cost of Compliance $240

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — ***Final Subtotal*** **$900**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** — ***Adjustment*** **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$900**

STATUTORY LIMIT ADJUSTMENT — ***Final Assessed Penalty*** **$900**

DEFERRAL **20.0%** Reduction — ***Adjustment*** **-$180**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$720**

Corrected Copy

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Rights		
Enf. Coordinator	Alejandro Laje		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 (*number of judgments or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** -10%

Corrected Copy

Screening Date 5-Oct-2021 **Docket No.** 2021-1354-MLM-E **PCW**

Respondent Nico Jaap DeBoer

Policy Revision 5 (January 28, 2021)

Case ID No. 61439

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102184405

Media Water Rights

Enf. Coordinator Alejandro Laje

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 297.11 and Tex. Water Code §§ 11.081 and 11.121

Violation Description Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent was using water from a freshwater impoundment to irrigate the land management units at the Facility without prior authorization.

Base Penalty $5,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10.0%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $4,500

$500

Violation Events

Number of Violation Events: 2 — 103 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty $1,000

Two quarterly events are recommended, calculated from the investigation date (June 24, 2021) to the screening date (October 5, 2021).

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $35

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Executive Summary – Enforcement Matter – Case No. 61439
Nico Jaap DeBoer
RN102184405
Docket No. 2021-1354-MLM-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
MLM – IHW, WQ, WR
Small Business:
No
Location(s) Where Violation(s) Occurred:
T&S Dairy, 7880 East Texas State Highway 154, Winnsboro, Wood County
Type of Operation:
Concentrated animal feeding operation
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: June 2, 2023
Comments Received: No

Penalty Information

Total Penalty Assessed: $16,888
Amount Deferred for Expedited Settlement: $3,377
Total Paid to General Revenue: $13,511
Total Due to General Revenue: $0
Payment Plan: N/A
Compliance History Classifications:
Person/CN - High
Site/RN - High
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): June 17, 2021
Complaint Information: Alleged there was contaminated runoff originating from T&S Dairy. Lake Greenbriar, located at Holly Lake Ranch, was experiencing a blue-green algae bloom. The complainant stated that algae streaking was first noticed on April 26, 2021. The complainant also stated that the area had received an unusual amount of rainfall prior to the algae being noticed. Lake Greenbriar is located approximately two miles south of T&S Dairy.
Date(s) of Investigation: June 24, 2021 through July 8, 2021
Date(s) of NOE(s): September 6, 2021

Executive Summary – Enforcement Matter – Case No. 61439
Nico Jaap DeBoer
RN102184405
Docket No. 2021-1354-MLM-E

Violation Information

1. Failed to provide the appropriate volume capacity of the Retention Control Structures ("RCS") at the Facility. Specifically, the facility is required to operate at 53.01 acre-feet of storage capacity and was operating at 31.21 acre-feet of storage capacity [30 TEX. ADMIN. CODE § 321.38(e)(7)(C) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920108, Part III. Pollution Prevention Plan Requirements, A. Technical Requirements No. 6(d)].

2. Failed to prevent tailwater discharges to waters in the state. Specifically, irrigation tailwater from Land Management Unit ("LMU") No. 1 discharged into a freshwater impoundment located south of LMU No. 1. Additionally, evidence of soil erosion and contaminated runoff into the freshwater impoundment from LMU No. 1 was documented at the Facility [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.31(a) and 321.40(e), and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 12(c)(6)].

3. Failed to properly store manure within the drainage area of an RCS or stored in a manner that prevents contaminated stormwater runoff from the storage area. Specifically, manure was stockpiled approximately 250 feet south of Freshwater Impoundment No. 1. The manure was not covered, protected, or bermed to prevent contaminated runoff and was not located withing the drainage area of an RCS [30 TEX. ADMIN. CODE § 321.39(e) and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 9(b)].

4. Failed to deed record disposal of industrial solid waste or municipal hazardous waste. Specifically, the Respondent disposed of cattle carcasses at the Facility prior to deed recording the disposal location in county records [30 TEX. ADMIN. CODE § 335.5(a) and (b)].

5. Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent was using water from a freshwater impoundment to irrigate the LMUs at the Facility without prior authorization [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE §§ 11.081 and 11.121].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

a. On July 5, 2021, removed and properly disposed of the manure stockpile located approximately 250 feet south of Freshwater Impoundment No. 1; and

b. On February 23, 2022, deed recorded the carcass disposal site in Wood County.

Technical Requirements:

The Order will require the Respondent to:

a. Immediately, cease diverting, impounding, storing, taking, or using state water until authorization has been obtained.

b. Within 15 days, submit written documentation of compliance with a.

c. Within 30 days:

i. Submit a Water Rights permit application;

ii. Provide the appropriate storage capacity of the RCSs at the Facility of 53.01 acre-feet; and

iii. Develop and implement procedures and conduct employee training to ensure irrigation practices are managed to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions.

d. Within 45 days, submit written certification of compliance with c.

e. Within 330 days, submit written certification that either the Respondent has ceased diverting, impounding, storing, taking, or using state water at the Facility, or authorization to divert, impound, store, take, or use state water has been obtained.

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Ellen Ojeda, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-2581; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548
Respondent: Nico Jaap DeBoer, Owner, 19008 Farm-to-Market Road 3079, Chandler, Texas 75758
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021) — *PCW Revision February 11, 2021*

DATES						
	Assigned	7-Sep-2021				
	PCW	28-Jan-2022	**Screening**	5-Oct-2021	**EPA Due**	

RESPONDENT/FACILITY INFORMATION

Respondent	Nico Jaap DeBoer		
Reg. Ent. Ref. No.	RN102184405		
Facility/Site Region	5-Tyler	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	61439	**No. of Violations**	4
Docket No.	2021-1354-MLM-E	**Order Type**	1660
Media Program(s)	Water Quality	**Government/Non-Profit**	No
Multi-Media	Industrial and Hazardous Waste	**Enf. Coordinator**	Alejandro Laje
		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*** **$18,250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **-10.0%** Adjustment — ***Subtotals 2, 3, & 7*** **-$1,825**

Notes: Reduction for High Performer Classification.

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*** **-$437**

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

Total EB Amounts	$6,741
Estimated Cost of Compliance	$27,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — ***Final Subtotal*** **$15,988**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** — ***Adjustment*** **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$15,988**

STATUTORY LIMIT ADJUSTMENT — ***Final Assessed Penalty*** **$15,988**

DEFERRAL **20.0%** Reduction — ***Adjustment*** **-$3,197**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$12,791**

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Quality		
Enf. Coordinator	Alejandro Laje		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 (*number of judgments or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** -10%

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Quality		
Enf. Coordinator	Alejandro Laje		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.38(e)(7)(C) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920108, Part III. Pollution Prevention Plan Requirements, A. Technical Requirements No. 6(d)

Violation Description Failed to provide the appropriate volume capacity of the Retention Control Structures ("RCS") at the Facility. Specifically, the Facility is required to operate at 53.01 acre-feet of storage capacity and is operating at 31.21 acre-feet of storage capacity.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $21,250

$3,750

Violation Events

Number of Violation Events: 2 — 103 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Two quarterly events are recommended, calculated from the investigation date (June 24, 2021) to the screening date (October 5, 2021).

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal $7,500

Economic Benefit (EB) for this violation

Estimated EB Amount $6,683

Statutory Limit Test

Violation Final Penalty Total $6,750

This violation Final Assessed Penalty (adjusted for limits) $6,750

Economic Benefit Worksheet

Respondent Nico Jaap DeBoer
Case ID No. 61439
Reg. Ent. Reference No. RN102184405
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	Costs Saved	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/Construction	$25,000	9-Oct-2019	3-Aug-2023	3.82	$318	$6,365	$6,683
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to provide the appropriate storage capacity of the RCSs at the Facility of 53.01 acre-feet. Date required is the date the violation was initially documented, and the final date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE 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				0.00	$0	$0	$0
ONE-TIME avoided costs				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $25,000

TOTAL $6,683

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Quality		
Enf. Coordinator	Alejandro Laje		

Violation Number 2

Rule Cite(s): Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code §§ 321.31(a) and 321.40(e), and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 12(c)(6)

Violation Description: Failed to prevent tailwater discharges to waters in the state. Specifically, irrigation tailwater from Land Management Unit ("LMU") No. 1 discharged into a freshwater impoundment located south of LMU No. 1. Additionally, evidence of soil erosion and contaminated runoff into the freshwater impoundment from LMU No. 1 was documented at the Facility.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm Major	Moderate	Minor
Actual			X
Potential			

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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

Adjustment $21,250

$3,750

Violation Events

Number of Violation Events 2 — 103 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Two quarterly events are recommended, calculated from the investigation date (June 24, 2021) to the screening date (October 5, 2021).

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal $7,500

Economic Benefit (EB) for this violation

Estimated EB Amount $48

Statutory Limit Test

Violation Final Penalty Total $6,750

This violation Final Assessed Penalty (adjusted for limits) $6,750

Economic Benefit Worksheet

Respondent Nico Jaap DeBoer
Case ID No. 61439
Reg. Ent. Reference No. RN102184405
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	Costs Saved	EB Amount
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	$250	9-Oct-2019	3-Aug-2023	3.82	$48	n/a	$48
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to develop and implement procedures and conduct employee training to ensure irrigation practices are managed to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions. Date required is the initial date the dishcharge was documented, and the final date is the estimated date of compliance.						
Avoided Costs	**ANNUALIZE 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				0.00	$0	$0	$0
ONE-TIME avoided costs				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $250

TOTAL $48

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Quality		
Enf. Coordinator	Alejandro Laje		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 321.39(e) and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 9(b)

Violation Description Failed to properly store manure within the drainage area of an RCS or stored in a manner that prevents contaminated stormwater runoff from the storage area. Specifically, manure was stockpiled approximately 250 feet south of Freshwater Impoundment No. 1. The manure was not covered, protected, or bermed to prevent contaminated runoff and was not located withing the drainage area of an RCS.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	**Harm** Major	Moderate	Minor
Actual			
Potential			X

Percent 3.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $24,250

$750

Violation Events

Number of Violation Events 1 — 11 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty $750

One quarterly event is recommended, calculated from the investigation date (June 24, 2021) to the date of compliance (July 5, 2021).

Good Faith Efforts to Comply

25.0% Reduction $187

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		

Notes: The Respondent achieved compliance on July 5, 2021.

Violation Subtotal $563

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $488

This violation Final Assessed Penalty (adjusted for limits) $488

Economic Benefit Worksheet

Respondent Nico Jaap DeBoer
Case ID No. 61439
Reg. Ent. Reference No. RN102184405
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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	$1,500	24-Jun-2021	5-Jul-2021	0.03	$2	n/a	$2
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to remove and properly dispose of the manure stockpile, located approximately 250 feet south of Freshwater Impoundment No. 1. Date required is the investigation date, and the final date is the date of compliance.						
Avoided Costs	ANNUALIZE 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				0.00	$0	$0	$0
ONE-TIME avoided costs				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,500

TOTAL $2

Screening Date	5-Oct-2021	**Docket No.** 2021-1354-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer		*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439		*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405		
Media	Water Quality		
Enf. Coordinator	Alejandro Laje		

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 335.5(a) and (b)

Violation Description Failed to deed record disposal of industrial solid waste or municipal hazardous waste. Specifically, the Respondent disposed of cattle carcasses at the Facility prior to deed recording the disposal location in county records.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10.0%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $22,500

$2,500

Violation Events

Number of Violation Events: 1 — 89 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty $2,500

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction $250

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		

Notes: The Respondent achieved compliance on February 23, 2022.

Violation Subtotal $2,250

Economic Benefit (EB) for this violation

Estimated EB Amount $8

Statutory Limit Test

Violation Final Penalty Total $2,000

This violation Final Assessed Penalty (adjusted for limits) $2,000

Economic Benefit Worksheet

Respondent Nico Jaap DeBoer
Case ID No. 61439
Reg. Ent. Reference No. RN102184405
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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)	$250	24-Jun-2021	23-Feb-2022	0.67	$8	n/a	$8
Notes for DELAYED costs	Estimated cost to deed record the carcass disposal site in Wood County. Date required is the initial investigation date, and the final date is the date of compliance.						
Avoided Costs	ANNUALIZE 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				0.00	$0	$0	$0
ONE-TIME avoided costs				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $250

TOTAL $8

Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021) *PCW Revision February 11, 2021*

DATES						
	Assigned	7-Sep-2021				
	PCW	28-Jan-2022	**Screening**	5-Oct-2021	**EPA Due**	

RESPONDENT/FACILITY INFORMATION

Respondent	Nico Jaap DeBoer		
Reg. Ent. Ref. No.	RN102184405		
Facility/Site Region	5-Tyler	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	61439	**No. of Violations**	1
Docket No.	2021-1351-MLM-E	**Order Type**	1660
Media Program(s)	Water Rights	**Government/Non-Profit**	No
Multi-Media	Water Quality	**Enf. Coordinator**	Alejandro Laje
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 **Maximum** $5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) ***Subtotal 1*** **$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **-10.0%** Adjustment ***Subtotals 2, 3, & 7*** **-$100**

Notes: Reduction for High Performer Classification.

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 $35
Estimated Cost of Compliance $240

**Capped at the Total EB $ Amount*

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** ***Adjustment*** **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$900**

STATUTORY LIMIT ADJUSTMENT ***Final Assessed Penalty*** **$900**

DEFERRAL **20.0%** Reduction ***Adjustment*** **-$180**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$720**

Screening Date	5-Oct-2021	**Docket No.**	2021-1351-MLM-E	**PCW**
Respondent	Nico Jaap DeBoer			*Policy Revision 5 (January 28, 2021)*
Case ID No.	61439			*PCW Revision February 11, 2021*
Reg. Ent. Reference No.	RN102184405			
Media	Water Rights			
Enf. Coordinator	Alejandro Laje			

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 (*number of judgments or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** -10%

Screening Date 5-Oct-2021 **Docket No.** 2021-1351-MLM-E **PCW**

Respondent Nico Jaap DeBoer

Policy Revision 5 (January 28, 2021)

Case ID No. 61439

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102184405

Media Water Rights

Enf. Coordinator Alejandro Laje

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 297.11 and Tex. Water Code §§ 11.081 and 11.121

Violation Description Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent was using water from a freshwater impoundment to irrigate the land management units at the Facility without prior authorization.

Base Penalty $5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10.0%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $4,500

$500

Violation Events

Number of Violation Events: 2 — 103 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty $1,000

Two quarterly events are recommended, calculated from the investigation date (June 24, 2021) to the screening date (October 5, 2021).

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $35

Statutory Limit Test

Violation Final Penalty Total $900

This violation Final Assessed Penalty (adjusted for limits) $900

Economic Benefit Worksheet

Respondent Nico Jaap DeBoer
Case ID No. 61439
Reg. Ent. Reference No. RN102184405
Media Water Rights
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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	$240	24-Jun-2021	30-May-2024	2.93	$35	n/a	$35
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to prepare and submit a Water Rights permit application and obtain authorization to divert, impound, store, take, or use state water. Date required is the investigation date, and the final date is the estimated date of compliance.

Avoided Costs (ANNUALIZE 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				0.00	$0	$0	$0
ONE-TIME avoided costs				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance $240

TOTAL $35

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.

Compliance History Report

Compliance History Report for CN601180649, RN102184405, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN601180649, Nico Jaap DeBoer **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102184405, T&S DAIRY **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 12 - Agriculture, Forestry, Fishing, and Hunting

Location: 7880 East Texas State Highway 154, Winnsboro, Wood County, Texas

TCEQ Region: REGION 05 - TYLER

ID Number(s):

AIR NEW SOURCE PERMITS ACCOUNT NUMBER HM0133E **WASTEWATER AGRICULTURE** PERMIT TXG920108

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 83876

Compliance History Period: September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

Date Compliance History Report Prepared: January 10, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 10, 2018 to January 10, 2023

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Alejandro Laje **Phone:** (512) 239-2547

Site and Owner/Operator History:

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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
Item 1 April 30, 2019 (1556069)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.
N/A

F. Environmental audits:
N/A

G. Type of environmental management systems (EMSs):
N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
NICO JAAP DEBOER	**§**	
RN102184405	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2021-1354-MLM-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 Nico Jaap DeBoer (the "Respondent") under the authority of TEX. WATER CODE chs. 7, 11, and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, together stipulate that:

1. The Respondent owns and operates a concentrated animal feeding operation located at 7880 East Texas State Highway 154 in Winnsboro, Wood County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). The Facility involves or involved the management of industrial and hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Facility, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(51).

2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, 7.073, and 11.0842 and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 and 11.0842 because it alleges violations of TEX. WATER CODE chs. 11 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ.

3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

4. An administrative penalty in the amount of $16,888 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid $13,511 of the penalty and $3,377 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

5. 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). 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.

6. 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 Order.

7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.

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

9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:

   a. On July 5, 2021, removed and properly disposed of the manure stockpile located approximately 250 feet south of Freshwater Impoundment No. 1; and

   b. On February 23, 2022, deed recorded the carcass disposal site in Wood County.

II. ALLEGATIONS

During an investigation at the Facility conducted from June 24, 2021 through July 8, 2021, an investigator documented that the Respondent:

1. Failed to provide the appropriate volume capacity of the Retention Control Structures ("RCS") at the Facility, in violation of 30 TEX. ADMIN. CODE § 321.38(e)(7)(C) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXG920108, Part III. Pollution Prevention Plan Requirements, A. Technical Requirements No. 6(d). Specifically, the facility is required to operate at 53.01 acre-feet of storage capacity and was operating at 31.21 acre-feet of storage capacity.

2. Failed to prevent tailwater discharges to waters in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 321.31(a) and 321.40(e), and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 12(c)(6). Specifically, irrigation tailwater from Land Management Unit ("LMU") No. 1 discharged into a freshwater impoundment located south of LMU No. 1. Additionally, evidence of soil erosion and contaminated runoff into the freshwater impoundment from LMU No. 1 was documented at the Facility.

3. Failed to properly store manure within the drainage area of an RCS or stored in a manner that prevents contaminated stormwater runoff from the storage area, in violation of 30 TEX. ADMIN. CODE § 321.39(e) and TPDES General Permit No. TXG920108, Part III, Pollution Prevention Plan Requirements, A. Technical Requirements No. 9(b). Specifically, manure was stockpiled approximately 250 feet south of Freshwater Impoundment No. 1. The manure was not covered, protected, or bermed to prevent contaminated runoff and was not located withing the drainage area of an RCS.

4. Failed to deed record disposal of industrial solid waste or municipal hazardous waste, in violation of 30 TEX. ADMIN. CODE § 335.5(a) and (b). Specifically, the Respondent disposed of cattle carcasses at the Facility prior to deed recording the disposal location in county records.

5. Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE §§ 11.081 and 11.121. Specifically, the Respondent was using water from a freshwater impoundment to irrigate the LMUs at the Facility without prior authorization.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Nico Jaap DeBoer, Docket No. 2021-1354-MLM-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. The Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Order, cease diverting, impounding, storing, taking, or using state water until authorization has been obtained.

   b. Within 15 days after the effective date of this Order, submit written documentation of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.f.

   c. Within 30 days after the effective date of this Order:

      i. Submit a Water Rights permit application to:

         Water Availability Division, MC 160
         Texas Commission on Environmental Quality
         P.O. Box 13087
         Austin, Texas 78711-3087

Respond completely and adequately to all TCEQ requests for additional information within 30 days of such request or by any other deadline specified in writing;

ii. Provide the appropriate storage capacity of the RCSs at the Facility of 53.01 acre-feet; and

iii. Develop and implement procedures and conduct employee training to ensure irrigation practices are managed to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions.

d. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision Nos. 2.c.i through 2.c.iii, in accordance with Ordering Provision No. 2.f.

e. Within 330 days after the effective date of this Order, submit written certification that either the Respondent has ceased diverting, impounding, storing, taking, or using state water at the Facility, or authorization to divert, impound, store, take, or use state water has been obtained in compliance with TEX. WATER CODE §§ 11.121 and 11.124. The written certification shall be submitted in accordance with Ordering Provision No. 2.f.

f. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall 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:

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

with a copy to:

> Water Section Manager
> Tyler Regional Office
> Texas Commission on Environmental Quality
> 2916 Teague Drive
> Tyler, Texas 75701-3734

3. All relief not expressly granted in this Order is denied.

4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this 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 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.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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. Extension requests shall be sent to the Enforcement Division at the address listed above.

7. This 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 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.

8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____ _____
For the Commission Date

_____ 6/20/2023
For the Executive Director Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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.

X_____ 05/03/2023
Signature Date

NICO DE BOER Owner
Name (Printed or typed) Title
Authorized Representative of
Nico Jaap DeBoer

☐ *If mailing address has changed, please check this box and provide the new address below:*

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