

**Executive Summary – Enforcement Matter – Case No. 62556  
Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
RN102739307  
Docket No. 2022-0795-AGR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AGR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Sierra Dairy, 9715 Farm-to-Market Road 2156, Dublin, Erath County

**Type of Operation:**

Concentrated animal feeding operation (“CAFO”)

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 3, 2023

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$17,213

**Amount Deferred for Expedited Settlement:** \$3,442

**Total Paid to General Revenue:** \$13,771

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** February 22, 2022 through March 7, 2022

**Date(s) of NOE(s):** May 10, 2022

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RN102739307  
Docket No. 2022-0795-AGR-E**

***Violation Information***

1. Failed to keep records in the pollution prevention plan for a minimum of five years from the date the record was created. Specifically, the application records for 2022 did not include the waste applied to Land Management Unit ("LMU") No. 7 [30 TEX. ADMIN. CODE § 321.46(d)(10) and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG921489, Part IV.A.2.(b)].
2. Failed to adhere to required buffers. Specifically, wastewater was applied within the buffers of LMU Nos. 4 and 6 [30 TEX. ADMIN. CODE §§ 321.40(h) and 321.42(w) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(f)(1)].
3. Failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state. Specifically, a mechanical failure of irrigation risers located in LMU Nos. 4, 5, and 6, and over application of wastewater in LMU No. 6 resulted in a discharge of approximately 20,500 gallons of wastewater into a freshwater pond and an unnamed tributary to Cow Creek. Additionally, evidence of a past discharge of wastewater from LMU M into Cow Creek and from a transfer pipe break onto privately owned land was documented [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.40(d), Tex. Water Code § 26.121, and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(1)].
4. Failed to properly notify the TCEQ of a discharge to water in the state. Specifically, the oral notification made on February 22, 2022 and written notification provided on March 2, 2022, did not include the past discharges documented between LMUs TS and GGS as well as Cow Creek adjacent to LMU M [30 TEX. ADMIN. CODE § 321.44 and TPDES CAFO General Permit No. TXG921489, Part IV.B.5].
5. Failed to submit a Notice of Change for a Substantial Change. Specifically, wastewater application was noted on land not designated as LMUs. Waste application was noted in an area north of LMU 7 adjacent to a freshwater pond, in the tree line adjacent to the west side LMU 6, and outside of the center pivot irrigation system in LMU M on the south side [30 TEX. ADMIN. CODE § 305.125(8) and TPDES CAFO General Permit No. TXG921489, Part II.C.3.(a)].
6. Failed to apply waste at agronomic rates and hydrologic needs. Specifically, wastewater was documented migrating from LMU Nos. 4 and 6 [30 TEX. ADMIN. CODE § 321.40(b) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(4)].
7. Failed to collect and analyze soil samples prior to waste application. Specifically, soil samples for LMU No. 7 were not collected and analyzed prior to the wastewater application [30 TEX. ADMIN. CODE § 321.40(m)(1)(B) and TPDES CAFO General Permit No. TXG921489, Part III.A.13.(a)(2)].

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***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By March 4, 2022, the Respondents ceased the discharge, removed and properly disposed of the agricultural wastewater, and cleaned and remediated the affected areas.

**Technical Requirements:**

The Order will require the Respondents to:

a. Within 30 days:

i. Update the Facility's operational guidance and conduct employee training to ensure:

1. All records are properly kept in the pollution prevention plan;

2. The required buffer is maintained between all manure, sludge, and wastewater application areas and all surface water in the state;

3. Wastewater is applied to land designated as LMUs;

4. Wastewater is applied at agronomic rates and hydrologic needs; and

5. At least one representative soil sample is collected and analyzed before commencing land application of manure, sludge, or wastewater on LMUs and before resuming land application on LMUs where manure, sludge, or wastewater was not applied during the preceding year.

ii. Submit a written notification for the discharges observed between LMUs TS and GGS, and to Cow Creek adjacent to LMU M.

iii. Submit a Notice of Change to add LMUs or increase application acreage.

b. Within 45 days, submit written certification to demonstrate compliance with a.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Harley Hobson, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-1337; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** Alan Vander Horst, Owner / Operator, Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC, P.O. Box 153, Dublin, Texas 76446

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	15-Jun-2022	<b>Screening</b>	27-Jun-2022	<b>EPA Due</b>	
	<b>PCW</b>	1-Aug-2022				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC
<b>Reg. Ent. Ref. No.</b>	RN102739307
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	62556	<b>No. of Violations</b>	7
<b>Docket No.</b>	2022-0795-AGR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Harley Hobson
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$18,750
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	0.0% Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for Compliance History.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondents do not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$1,562
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$214
Estimated Cost of Compliance	\$6,775

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$17,188
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.1%	<b>Adjustment</b>	\$25
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with Violation No. 7.

<b>Final Penalty Amount</b>	\$17,213
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$17,213
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<b>DEFERRAL</b>	20.0%	Reduction	<b>Adjustment</b>	-\$3,442
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$13,771
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**Screening Date** 27-Jun-2022

**Docket No.** 2022-0795-AGR-E

**PCW**

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC

*Policy Revision 5 (January 28, 2021)*

**Case ID No.** 62556

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN102739307

**Media** Water Quality

**Enf. Coordinator** Harley Hobson

### 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 ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
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 judgments 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%
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)

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

**Compliance History Notes**

No adjustment for Compliance History.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 0%

Screening Date 27-Jun-2022

Docket No. 2022-0795-AGR-E

PCW

Respondent Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC

Policy Revision 5 (January 28, 2021)

Case ID No. 62556

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102739307

Media Water Quality

Enf. Coordinator Harley Hobson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.46(d)(10) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operation ("CAFO") General Permit No. TXG921489, Part IV.A.2.(b)

Violation Description

Failed to keep records in the pollution prevention plan ("PPP") for a minimum of five years from the date the record was created. Specifically, the application records for 2022 did not include the waste applied to Land Management Unit ("LMU") No. 7.

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 1.0%

Matrix Notes

Less than 30% of the rule requirements were not met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

125 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$250

One single event is recommended.

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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$250

This violation Final Assessed Penalty (adjusted for limits) \$250

# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$50	22-Feb-2022	21-Mar-2024	2.08	\$5	n/a	\$5
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 Training/Sampling delayed cost to update the Facility's operational guidance and conduct employee training to ensure all records are properly kept in the PPP, in accordance with 30 Tex. Admin. Code § 321.46(d). Date Required is the investigation start 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 \$50

**TOTAL** \$5

<b>Screening Date</b>	27-Jun-2022	<b>Docket No.</b>	2022-0795-AGR-E	<b>PCW</b>
<b>Respondent</b>	Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC		<i>Policy Revision 5 (January 28, 2021)</i>	
<b>Case ID No.</b>	62556	<i>PCW Revision February 11, 2021</i>		
<b>Reg. Ent. Reference No.</b>	RN102739307			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Harley Hobson			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 321.40(h) and 321.42(w) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(f)(1)			
<b>Violation Description</b>	Failed to adhere to required buffers. Specifically, wastewater was applied within the buffers of LMU Nos. 4 and 6.			
<b>Base Penalty</b>				\$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>			
	Major	Moderate	Minor	
	Actual		X	<b>Percent</b> 15.0%
Potential				

**>> Programmatic Matrix**

	Major	Moderate	Minor	
Falsification				<b>Percent</b> 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      125 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 start date (February 22, 2022) to the screening date (June 27, 2022).

**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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$7,500

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount \$26	Violation Final Penalty Total \$7,511
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$7,511	



# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	22-Feb-2022	21-Mar-2024	2.08	\$26	n/a	\$26
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 Training/Sampling delayed cost to update the Facility's operational guidance and conduct employee training to ensure the required buffer is maintained between all manure, sludge, and wastewater application areas and all surface water in the state, in accordance with 30 Tex. Admin. Code § 321.40(h). Date Required is the initial 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 \$250

**TOTAL** \$26

**Screening Date** 27-Jun-2022 **Docket No.** 2022-0795-AGR-E **PCW**  
**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62556 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102739307  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code §§ 305.125(1) and 321.40(d), Tex. Water Code § 26.121, and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(1)  
**Violation Description** Failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state. Specifically, a mechanical failure of irrigation risers located in LMU Nos. 4, 5, and 6, and over application of wastewater in LMU No. 6 resulted in a discharge of approximately 20,500 gallons of wastewater into a freshwater pond and an unnamed tributary to Cow Creek. Additionally, evidence of a past discharge of wastewater from LMU M into Cow Creek and from a transfer pipe break onto privately owned land was documented.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		X		25.0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

**Adjustment** \$18,750

\$6,250

**Violation Events**

Number of Violation Events 1 10 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$6,250

One monthly event is recommended, calculated from the investigation start date (February 22, 2022) to the compliance date (March 4, 2022).

**Good Faith Efforts to Comply** 25.0% Reduction \$1,562

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

**Notes** The Respondents achieved compliance by March 4, 2022.

**Violation Subtotal** \$4,688

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

**Estimated EB Amount** \$7 **Violation Final Penalty Total** \$4,695

**This violation Final Assessed Penalty (adjusted for limits)** \$4,695

# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$5,000	22-Feb-2022	4-Mar-2022	0.03	\$7	n/a	\$7
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to cease the discharge, remove and properly dispose of the agricultural wastewater, and clean and remediate the affected areas. 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** \$5,000

**TOTAL** \$7

**Screening Date** 27-Jun-2022 **Docket No.** 2022-0795-AGR-E **PCW**  
**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62556 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102739307  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.44 and TPDES CAFO General Permit No. TXG921489, Part IV.B.5  
**Violation Description** Failed to properly notify the TCEQ of a discharge to water in the state. Specifically, the oral notification made on February 22, 2022 and written notification provided on March 2, 2022, did not include the past discharges documented between LMUs TS and GGS as well as Cow Creek adjacent to LMU M.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0.0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
				X	<b>Percent</b> 1.0%

**Matrix Notes** Less than 30% of the rule requirements were not met.

**Adjustment** \$24,750

\$250

**Violation Events**

Number of Violation Events 1 125 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$250

One single event is recommended.

**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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$250

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

**Estimated EB Amount** \$5 **Violation Final Penalty Total** \$250

**This violation Final Assessed Penalty (adjusted for limits)** \$250

# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$50	22-Feb-2022	21-Mar-2024	2.08	\$5	n/a	\$5
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 Other delayed cost to submit a written notification for the discharges observed between LMUs TS and GGS, and to Cow Creek adjacent to LMU M, in accordance with 30 Tex. Admin. Code § 321.44. Date Required is the investigation start 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 \$50

**TOTAL** \$5

**Screening Date** 27-Jun-2022 **Docket No.** 2022-0795-AGR-E **PCW**  
**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62556 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102739307  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 5  
**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(8) and TPDES CAFO General Permit No. TXG921489, Part II.C.3.(a)  
**Violation Description** Failed to submit a Notice of Change for a Substantial Change. Specifically, wastewater application was noted on land not designated as LMUs. Waste application was noted in an area north of LMU No. 7 adjacent to a freshwater pond, in the tree line adjacent to the west side LMU No. 6, and outside of the center pivot irrigation system in LMU M on the south side.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		X			10.0%

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

**Adjustment** \$22,500

\$2,500

**Violation Events**

Number of Violation Events 1 Number of violation days 125

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$2,500

One single event is recommended.

**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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$120 **Violation Final Penalty Total** \$2,504

**This violation Final Assessed Penalty (adjusted for limits)** \$2,504

# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$150	22-Feb-2022	21-Mar-2024	2.08	\$16	n/a	\$16
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,000	22-Feb-2022	21-Mar-2024	2.08	\$104	n/a	\$104
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated Training/Sampling delayed cost to update the Facility's operational guidance and conduct employee training to ensure that wastewater is applied to land designated as LMUs, in accordance with 30 Tex. Admin. Code § 321.44. Date Required is the investigation start date, and the Final Date is the estimated date of compliance.

Estimated Permit Costs to submit a Notice of Change to add LMUs or increase application acreage, in accordance with TPDES CAFO General Permit TXG920000 Part II.C.3. Date Required is the investigation start 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 \$1,150

**TOTAL** \$120

**Screening Date** 27-Jun-2022 **Docket No.** 2022-0795-AGR-E **PCW**  
**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62556 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102739307  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 6  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.40(b) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(4)  
**Violation Description** Failed to apply waste at agronomic rates and hydrologic needs. Specifically, wastewater was documented migrating from LMU Nos. 4 and 6.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				3.0%
	Potential			X	

**>> 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 1 125 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$750

One single event is recommended.

**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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$750

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

**Estimated EB Amount** \$10 **Violation Final Penalty Total** \$751

**This violation Final Assessed Penalty (adjusted for limits)** \$751



# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality  
 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$100	22-Feb-2022	21-Mar-2024	2.08	\$10	n/a	\$10
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 Training/Sampling delayed cost to update the Facility's operational guidance and conduct employee training to ensure that wastewater is applied at agronomic rates and hydrologic needs, in accordance with 30 Tex. Admin. Code § 321.40. Date Required is the investigation start 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 \$100

**TOTAL** \$10

**Screening Date** 27-Jun-2022 **Docket No.** 2022-0795-AGR-E **PCW**  
**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 62556 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN102739307  
**Media** Water Quality  
**Enf. Coordinator** Harley Hobson

**Violation Number** 7  
**Rule Cite(s)** 30 Tex. Admin. Code § 321.40(m)(1)(B) and TPDES CAFO General Permit No. TXG921489, Part III.A.13.(a)(2)  
**Violation Description** Failed to collect and analyze soil samples prior to waste application. Specifically, soil samples for LMU No. 7 were not collected and analyzed prior to the wastewater application.

**Base Penalty** \$25,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 5.0%
Potential		X			

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0.0%
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.				

**Adjustment** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 1 125 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

**Violation Base Penalty** \$1,250

One single event is recommended.

**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 Respondents do 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** \$41 **Violation Final Penalty Total** \$1,252

**This violation Final Assessed Penalty (adjusted for limits)** \$1,252

# Economic Benefit Worksheet

**Respondent** Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC  
**Case ID No.** 62556  
**Reg. Ent. Reference No.** RN102739307  
**Media Violation No.** Water Quality 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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### 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	\$150	22-Feb-2022	21-Mar-2024	2.08	\$16	n/a	\$16
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 Training/Sampling delayed cost to update the Facility's operational guidance and conduct employee training to ensure that at least one representative soil sample is collected and analyzed before commencing land application of manure, sludge, or wastewater on LMUs and before resuming land application on LMUs where manure, sludge, or wastewater was not applied during the preceding year, in accordance with 30 Tex. Admin. Code § 321.40. Date Required is the investigation start 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	\$25	22-Feb-2022	27-Jun-2022	0.34	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated ONE-TIME avoided costs to collect and analyze at least one soil sample prior to wastewater application to LMU No. 7. Date Required is the investigation start date, and the Final Date is the screening date.

Approx. Cost of Compliance \$175

**TOTAL** \$41



# Compliance History Report

Compliance History Report for CN601724321, RN102739307, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

<b>Customer, Respondent, or Owner/Operator:</b>	CN601724321, Vander Horst Enterprises, LLC	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	0.85
<b>Regulated Entity:</b>	RN102739307, SIERRA DAIRY	<b>Classification:</b>	HIGH	<b>Rating:</b>	0.00
<b>Complexity Points:</b>	8	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	12 - Agriculture, Forestry, Fishing, and Hunting				
<b>Location:</b>	9715 FM 2156 DUBLIN, TX 76446-5436, ERATH COUNTY				
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX				

**ID Number(s):**

**WASTEWATER AGRICULTURE PERMIT TXG921489**

**PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 77572**

**PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 53716**

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

**Date Compliance History Report Prepared:** August 28, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** August 28, 2018 to August 28, 2023

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

**Name:** TCEQ Staff Member

**Phone:** (512) 239-1000

**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	November 09, 2018	(1526171)
Item 2	January 16, 2019	(1526059)
Item 3	February 25, 2019	(1540800)
Item 4	May 31, 2019	(1569289)
Item 5	July 25, 2019	(1580803)
Item 7	September 04, 2019	(1581521)
Item 8	July 07, 2020	(1659290)
Item 9	March 10, 2021	(1704925)
Item 10	April 29, 2021	(1644662)
Item 11	July 30, 2021	(1747433)

Item 12	May 10, 2022	(1812089)
Item 13	May 11, 2022	(1813079)
Item 14	August 24, 2022	(1839401)
Item 15	November 09, 2022	(1581525)

**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



# Compliance History Report

Compliance History Report for CN604147199, RN102739307, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

<b>Customer, Respondent, or Owner/Operator:</b>	CN604147199, 360 AG MANAGEMENT LLC	<b>Classification:</b> HIGH	<b>Rating:</b> 0.06
<b>Regulated Entity:</b>	RN102739307, SIERRA DAIRY	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Complexity Points:</b>	8	<b>Repeat Violator:</b> NO	
<b>CH Group:</b>	12 - Agriculture, Forestry, Fishing, and Hunting		
<b>Location:</b>	9715 FM 2156 DUBLIN, TX 76446-5436, ERATH COUNTY		
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX		

**ID Number(s):**

**WASTEWATER AGRICULTURE PERMIT TXG921489**

**PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 53716**

**PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 77572**

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

**Date Compliance History Report Prepared:** August 28, 2023

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** August 28, 2018 to August 28, 2023

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

**Name:** TCEQ Staff Member

**Phone:** (512) 239-1000

**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	November 09, 2018	(1526171)
Item 2	January 16, 2019	(1526059)
Item 3	February 25, 2019	(1540800)
Item 4	May 31, 2019	(1569289)
Item 5	July 25, 2019	(1580803)
Item 7	September 04, 2019	(1581521)
Item 8	July 07, 2020	(1659290)
Item 9	March 10, 2021	(1704925)
Item 10	April 29, 2021	(1644662)
Item 11	July 30, 2021	(1747433)

Item 12	May 10, 2022	(1812089)
Item 13	May 11, 2022	(1813079)
Item 14	August 24, 2022	(1839401)
Item 15	November 09, 2022	(1581525)

**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  
ENFORCEMENT ACTION  
CONCERNING  
VANDER HORST ENTERPRISES, LLC  
AND 360 AG MANAGEMENT LLC  
RN102739307

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2022-0795-AGR-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 Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC (the "Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents, together stipulate that:

1. The Respondents own and operate a Concentrated Animal Feeding Operation ("CAFO") located at 9715 Farm-to-Market Road 2156 in Dublin, Erath County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondents agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondents are subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 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 Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$17,213 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents paid \$13,771 of the penalty and \$3,442 is deferred contingent upon the Respondents' 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 Respondents fail 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 Respondents 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 Respondents have 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 by March 4, 2022, the Respondents ceased the discharge, removed and properly disposed of the agricultural wastewater, and cleaned and remediated the affected areas at the Facility.

## II. ALLEGATIONS

During an investigation at Facility conducted on February 22, 2022 through March 7, 2022, an investigator documented that the Respondents:

1. Failed to keep records in the pollution prevention plan ("PPP") for a minimum of five years from the date the record was created, in violation of 30 TEX. ADMIN. CODE § 321.46(d)(10) and Texas Pollutant Discharge Elimination System ("TPDES") CAFO General Permit No. TXG921489, Part IV.A.2.(b). Specifically, the application records for 2022 did not include the waste applied to Land Management Unit ("LMU") No. 7.
2. Failed to adhere to required buffers, in violation of 30 TEX. ADMIN. CODE §§ 321.40(h) and 321.42(w) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(f)(1). Specifically, wastewater was applied within the buffers of LMU Nos. 4 and 6.
3. Failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.40(d), Tex. Water Code § 26.121, and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(1). Specifically, a mechanical failure of irrigation risers located in LMU Nos. 4, 5, and 6, and over application of wastewater in LMU No. 6 resulted in a discharge of approximately 20,500 gallons of wastewater into a freshwater pond and an unnamed tributary to Cow Creek. Additionally, evidence of a past discharge of wastewater from LMU M into Cow Creek and from a transfer pipe break onto privately owned land was documented.
4. Failed to properly notify the TCEQ of a discharge to water in the state, in violation of 30 TEX. ADMIN. CODE § 321.44 and TPDES CAFO General Permit No. TXG921489, Part IV.B.5. Specifically, the oral notification made on February 22, 2022 and written notification provided on March 2, 2022, did not include the past discharges documented between LMUs TS and GGS as well as Cow Creek adjacent to LMU M.
5. Failed to submit a Notice of Change for a Substantial Change, in violation of 30 TEX. ADMIN. CODE § 305.125(8) and TPDES CAFO General Permit No. TXG921489, Part II.C.3.(a). Specifically, wastewater application was noted on land not designated as LMUs. Waste application was noted in an area north of LMU 7 adjacent to a freshwater pond, in the

tree line adjacent to the west side LMU 6, and outside of the center pivot irrigation system in LMU M on the south side.

6. Failed to apply waste at agronomic rates and hydrologic needs, in violation of 30 TEX. ADMIN. CODE § 321.40(b) and TPDES CAFO General Permit No. TXG921489, Part III.A.12.(c)(4). Specifically, wastewater was documented migrating from LMU Nos. 4 and 6.
7. Failed to collect and analyze soil samples prior to waste application, in violation of 30 TEX. ADMIN. CODE § 321.40(m)(1)(B) and TPDES CAFO General Permit No. TXG921489, Part III.A.13.(a)(2). Specifically, soil samples for LMU No. 7 were not collected and analyzed prior to the wastewater application.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

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

1. The Respondents are assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondents' 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: Vander Horst Enterprises, LLC and 360 AG MANAGEMENT LLC, Docket No. 2022-0795-AGR-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 Respondents are jointly and severally liable for the violations documented in this Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Order.
3. The Respondents shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Update the Facility's operational guidance and conduct employee training to ensure that:
      1. All records are properly kept in the PPP, in accordance with 30 TEX. ADMIN. CODE § 321.46(d);
      2. The required buffer is maintained between all manure, sludge, and wastewater application areas and all surface water in the state, in accordance with 30 TEX. ADMIN. CODE § 321.40(h);

3. Wastewater is applied to land designated as LMUs, in accordance with 30 TEX. ADMIN. CODE § 321.44;
  4. Wastewater is applied at agronomic rates and hydrologic needs, in accordance with 30 TEX. ADMIN. CODE § 321.40; and
  5. At least one representative soil sample is collected and analyzed before commencing land application of manure, sludge, or wastewater on LMUs and before resuming land application on LMUs where manure, sludge, or wastewater was not applied during the preceding year, in accordance with 30 TEX. ADMIN. CODE § 321.40.
- ii. Submit a written notification for the discharges observed between LMUs TS and GGS, and to Cow Creek adjacent to LMU M, in accordance with 30 TEX. ADMIN. CODE § 321.44.
  - iii. Submit a Notice of Change to add LMUs or increase application acreage, in accordance with TPDES CAFO General Permit TXG920000 Part II.C.3.
- b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i through 3.a.iii. The certification shall be signed by the Respondents 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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

5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive 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.
8. This Order, issued by the Commission, shall not be admissible against the Respondents 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.
9. 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.
10. 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

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For the Commission

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Date

  
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For the Executive Director

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12/13/2023

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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.

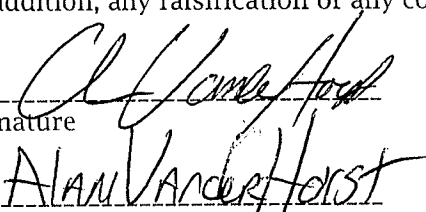
I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- 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.

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Signature

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Date

  
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Name (Printed or typed)

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Title

Alan Vander Horst  
Authorized Representative of  
Vander Horst Enterprises, LLC

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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

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Date

  
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For the Executive Director

12/13/2023  
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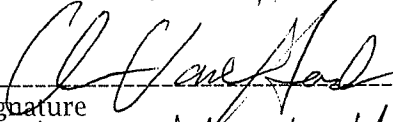
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- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
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Signature

12-1-23  
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Date

Alan Vander Horst  
-----  
Name (Printed or typed)  
Authorized Representative of  
360 AG MANAGEMENT LLC

12-1-23  
-----  
Title

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