

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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UNITED STATES OF AMERICA, )  
STATE OF TEXAS, )  
and )  
STATE OF OKLAHOMA )  
Plaintiffs, )  
v. ) Civil Action No.  
MAHARD EGG FARM, INC. ) CONSENT DECREE  
Defendant. )

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”); the State of Texas, on behalf of the Texas Commission on Environmental Quality (“TCEQ”); and the State of Oklahoma, on behalf of the Oklahoma Department of Agriculture, Food and Forestry (“ODAFF”) (collectively, the United States of America, the State of Texas, and the State of Oklahoma are referred to as “Plaintiffs”) have jointly filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Mahard Egg Farm, Inc. (“Mahard” or “Defendant”) has discharged and continues to discharge pollutants into waters of the United States in violation of the Clean Water Act (“CWA” or “Act”) and the regulations promulgated thereunder; has violated the conditions and limitations of Concentrated Animal Feeding Operations permits issued pursuant to the Clean Water Act; has violated Chapter 26 of the Texas Water Code, Chapters 341, 361, and 382 of the Texas Health and Safety Code, and Chapters 281, 290, 305, 321, 332, 334 and 335 of Title 30, Texas Administrative Code; and has violated the Oklahoma Concentrated Animal Feeding Operations Act Title 2 O.S. §§ 20-40 et seq., Oklahoma Department of Agriculture Permanent Rules Title 35:17-4 et seq.; Title 2 O.S. § 2-18.1; and Title 2 O.S. § 10-9.16 et seq. Defendant denies these allegations and further disputes that the United States on behalf of EPA has jurisdiction over certain of its alleged claims.

Whereas, the Defendant is an egg production company that owns or operates various poultry growing operations relevant to this proceeding (the “Facilities”) in Texas and Oklahoma;

Whereas, the Facilities consist of the Prosper Facility, the Vernon-Chillicothe Facility, and the Springhill Facility located in Texas (the “Texas Facilities”), and the Nebo Ranch

Facility, the Granite Ranch Facility, the Ravia Facility, and the Boogie Hill Facility (the “Oklahoma Facilities”);

Whereas, the Plaintiffs’ Complaint alleges that Defendant has not operated these Facilities in compliance with state and federal requirements;

Whereas, Defendant contests the factual and legal basis of the Complaint and does not admit any liability to the United States or EPA, or the State of Texas or TCEQ, or the State of Oklahoma or ODAFF, arising out of the transactions or occurrences alleged in the Complaint;

Whereas, the U.S. Environmental Protection Agency issued Administrative Order No. CWA-06-2008-1755 to Defendant on January 25, 2008, pertaining to closure of the lagoons at the Granite Ranch Facility, and herein acknowledges that, as of the date of lodging of this Decree, Defendant has substantially completed many of the affirmative requirements of that Order;

Whereas, Defendant has been denied funding from lenders as a result of this action, and Defendant has asserted an inability to fund the entire penalty within thirty days of entry;

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. This Court also has supplemental jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to 33 U.S.C. § 1319(b), 33 U.S.C. § 1319(f), and 28 U.S.C. §§ 1319(b) and 1395(a), because it is a judicial district in which the Defendant is doing business and in which certain of the alleged violations occurred. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State of Texas, and the State of Oklahoma, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Except as provided in Paragraph 5, below, no transfer of ownership or operation of any of the Facilities subject to this Decree, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented, unless: (a) the Plaintiffs consent to relieve Defendant of its obligations, and (b) the transferee agrees to undertake the obligations required by Sections V-VII of this Decree, as they apply to the Facility being transferred, and to be added as a Party under the Decree and thus be bound by the terms thereof. At least thirty (30) days prior to any

such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written transfer agreement, to EPA Region 6, the United States Attorney for the Northern District of Texas, the United States Department of Justice, the State of Texas, and the State of Oklahoma in accordance with Section XIII of this Decree (Notices). Any attempt to transfer ownership or operation of any of the Facilities (other than the Prosper Facility, as described in Paragraph 5, below) without complying with this Paragraph constitutes a violation of this Decree.

5. The parties acknowledge that at the time of lodging of this Decree, Defendant has entered into a sale agreement to transfer or has transferred certain real property, comprising some portion or all of the Prosper Facility, to Forest City Prosper, Limited Partnership, an entity formed for the purpose of developing the land for residential or commercial purposes. Except as provided in Section XVII (Termination) or as otherwise agreed to in writing by the United States and the State of Texas, no change in ownership of the Prosper facility, including but not limited to any lease or transfer of assets or real property, will alter Defendant's obligation to comply with the requirements of this Consent Decree or to ensure compliance by any successor, assign, or other third party.

6. Defendant shall provide a copy of this Consent Decree to all officers, supervisory employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act, or in state statute or regulations shall have the meanings assigned to them in the Act or such regulations, or in such state statute or regulation, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- A. “Act” shall mean the federal Clean Water Act, 33 U.S.C. §§ 1251-1387.
- B. “Agronomic Rates” shall mean the land application of Manure, Sludge, litter, Waste, or Wastewater at rates of application in accordance with a plan for nutrient management designed to enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth.
- C. “Complaint” shall mean the complaint filed by the United States, the State of Texas, and the State of Oklahoma in this action.
- D. “Nutrient Management Plan” shall mean a written plan developed for a specific facility that addresses the amount, source, placement, form, and timing of the application of all nutrients and soil



amendments in accordance with Natural Resources Conservation Service Practice Standard Code 590.

- E. “Consent Decree” or “Decree” shall mean this Decree and all Appendices attached hereto.
- F. “Day(s)” or “day(s)” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- G. “Defendant” shall mean Mahard Egg Farm, Inc.
- H. “Effective Date” shall mean the date on which this Consent Decree is entered by the Court.
- I. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- J. “Facility” or “Facilities” shall mean any one or more of the following operations, each of which is owned or operated by Defendant:

:

- i. “Prosper Facility” shall mean the site of an active pullet production operation located at 17087 Fishtrap Road, Prosper, Denton County, Texas, currently consisting of: four barns that house approximately 320,000 pullets, an

inactive egg-laying operation consisting of twelve barn foundations that historically housed approximately 1.2 million laying hens, one egg processing plant, three wastewater lagoons, one manure lagoon, and approximately 2,009 acres of land;

- ii. “Vernon-Chillicothe Facility” shall mean the site of an active egg laying operation located at 21080 County Road 87, Chillicothe, Wilbarger and Hardeman Counties, Texas, consisting of sixteen barns, housing approximately 1.7 million laying hens, four pullet houses, four barns housing approximately 440,000 pullets, one wastewater lagoon, and approximately 3,200 acres of land;
- iii. “Springhill Facility” shall mean the site of an inactive egg laying operation consisting of five barns that historically housed 150,000 laying hens, two wastewater lagoons, and approximately 50 acres of land located in Denton County, Texas;
- iv. “Nebo Ranch Facility” shall mean the site of an

active egg laying operation consisting of eleven barns, which house approximately 1.2 million laying hens, one egg processing warehouse, three wastewater lagoons, and approximately 3,120 acres of land located 8 miles south of Sulphur, Murray County, Oklahoma;

- v. “Ravia Facility” shall mean the site of an inactive pullet growing operation consisting of four barns, historically housing 280,000 pullets, and approximately 220 acres of land located near Ravia, Johnston County, Oklahoma;
- vi. “Granite Ranch Facility” shall mean the site of an inactive egg laying operation consisting of six barns, three former wastewater lagoons, three storm water ponds and approximately 1,900 acres of land located near Milburn, Johnston County, Oklahoma; and
- vii. “Boogie Hill Facility” shall mean the site of an active egg laying operation consisting of five barns, housing approximately 75,000 laying hens, five inactive barns, four wastewater lagoons and approximately 1,800 acres of land

located near Sulphur, Murray County,  
Oklahoma.

- K. “Filter Strip” means a strip or area of herbaceous vegetation that removes contaminants from overland flows by impeding the flow of soil, nutrients, and contaminants into nearby waters.
- L. “Lagoon” shall mean, for purposes of this Consent Decree only, a Retention Control Structure, as defined herein.
- M. “Land management unit” or “LMU” shall mean, for purposes of this Consent Decree only, an area of land owned, operated, controlled, rented, or leased by Defendant that was subject to the land application of Manure, Sludge, Waste, litter, or Wastewater from Defendant’s operations, and which is identified as “restricted grazing” or “no grazing” on the maps in Appendix A-2.
- N. “Manure” shall mean feces and/or urine excreted by animals. Manure includes bedding, compost, raw materials and other materials that have been commingled with manure.
- O. “NRCS” shall mean the Natural Resources Conservation Service.
- P. “ODAFF” shall mean the Oklahoma Department of Agriculture, Food and Forestry and any of its successor departments or agencies.
- Q. “Oklahoma Facilities” shall mean the Nebo Ranch Facility, the

Ravia Facility, Granite Ranch Facility, and the Boogie Hill Facility.

- R. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral.
- S. “Parties” shall mean the United States, the State of Texas, the State of Oklahoma, and Defendant, collectively.
- T. “Retention control structure” or “RCS” shall mean any basins, ponds, pits, tanks, and lagoons used to store and/or treat Manure, litter, Waste, Wastewater, and Sludge. RCS does not include conveyance systems such as irrigation piping or ditches that are designed and maintained to convey but not store any manure, litter, or water.
- U. “Riparian Areas” shall mean, for purposes of this Consent Decree only, those areas that are identified the maps in Appendix A-2 as “100' Buffer.”
- V. “Section” shall mean a portion of this Decree identified by a roman numeral.
- W. “Sludge” shall mean, for purposes of this Consent Decree only, solid, semi-solid, or slurry waste generated during the treatment of and/or storage of any Wastewater. The term includes materials resulting from treatment, coagulation, or sedimentation of waste in a retention control structure.

- X. “States” shall mean the State of Texas, acting on behalf of the Texas Commission on Environmental Quality; and the State of Oklahoma, acting on behalf of the Oklahoma Department of Agriculture, Food, and Forestry.
- Y. “TCEQ” shall mean the Texas Commission on Environmental Quality, and any of its predecessor and successor departments or agencies.
- Z. “Texas Facilities” shall mean the Prosper Facility, Vernon-Chillicothe Facility, and Springhill Facility.
- aa. “United States” shall mean the United States of America, acting on behalf of EPA.
- bb. “Waste” shall mean, for purposes of this Consent Decree only, Manure, animal excrement, animal carcasses, feed wastes, or any other waste associated with the confinement of animals from an animal feeding operation. For purposes of this Consent Decree only, Manure produced by grazing animals is not Waste.
- cc. “Wastewater” shall mean process wastewater, as that term is defined at 40 C.F.R. § 122.23(b)(7).

#### IV. PENALTIES AND FEES

9. Civil Penalty. Defendant shall pay a civil penalty in the amount of \$1,900,000. Payment shall be made in two parts, as follows:

A. The first civil penalty payment is due no later than thirty (30) days after the Effective Date of this Consent Decree. The first civil penalty payment shall be made as follows:

i. Defendant shall pay \$316,667 to the United States. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with instructions to be provided to Defendant, following lodging of the Consent Decree, by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Texas. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-09279 and the civil action number of this case) to the United States in accordance with Section XIII of this Decree (Notices).

ii. Defendant shall pay \$316,667 to the State of Oklahoma. Payment shall be made by certified check made payable to the State of Oklahoma (ID # 736017987) and shall be delivered to Clayton Eubanks AAG, Office of the Oklahoma Attorney General, Environmental Protection Unit, 313 NE 21<sup>st</sup> Street, Oklahoma City, OK 73105, or if he is unavailable, to the Attorney General of the State of Oklahoma.

iii. Defendant shall pay \$183,666 to the State of Texas. Payment shall be made by EFT to the Comptroller of Public Accounts, State of Texas, for the Attorney General’s Suspense Account, using the following instructions:

Financial Institution: TX COMP AUSTIN  
Routing Number: 114900164  
Account Name: Comptroller of Public Accounts  
Treasury Operations  
Account Number to Credit: 463600001  
Reference: AG No. 07-2440332 (Mahard)  
Attention: Office of the Attorney General  
Chief, EPAL Div. (463-2012)

Contact: Abel Rosas, Fin. Rptg (475-4380)

At the time of payment, Defendant shall likewise send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, in accordance with Section XIII of this Decree (Notices) and shall send a copy by email to [kellie.billings@oag.state.tx.us](mailto:kellie.billings@oag.state.tx.us). The transmittal letter shall state that the payment is made pursuant to this Consent Decree and shall reference the civil action number of this case and AG No. 07-2440332.

B. The second civil penalty payment is due no later than 180 days after the Effective Date of this Consent Decree. The second civil penalty payment shall be made as follows:

i. Defendant shall pay \$316,667 to the United States, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging. Payment of the total amount shall be made in accordance with the specifications set forth in Paragraph 9(A)(i) above.

ii. Defendant shall pay \$316,666 to the State of Oklahoma, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging. Payment of the total amount shall be made in accordance with the specifications set forth in Paragraph 9(A)(ii) above.

iii. Defendant shall pay \$449,667 to the State of Texas, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961, as of the date of lodging. Payment of the total amount shall be made in accordance with the specifications set forth in Paragraph 9(A)(iii) above.



10. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

11. Attorneys' Fees. Defendant shall pay to the Office of the Attorney General of the State of Texas reasonable attorneys' fees in the total amount of \$133,000. Payment of this amount shall be made no later than 30 days after the Effective Date of this Consent Decree. Payment of this amount shall be made in accordance with the specifications set forth in Paragraph 9(A)(iii) above, and may be made in one EFT, combined with the first civil penalty payment in Paragraph 9(A)(iii), above.

#### V. COMPLIANCE REQUIREMENTS

12. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### A. LAGOON CLOSURE

13. Defendant shall perform the Lagoon Closure Requirements at the Springhill Facility, Prosper Facility, Boogie Hill Facility, Granite Ranch Facility, and Nebo Ranch Facility in accordance with requirements set forth in Appendix B-1 and B-2, as applicable.

14. Defendant will provide Notice and a Certification of Completion to EPA and the relevant State, at the addresses specified in Section XIII (Notices), signed and certified in accordance with paragraph 25, when it has fully completed the lagoon closure requirements at each Facility as set forth in Appendix B-1 or B-2, as applicable. After review of this submittal, if EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 180 days of receipt of Defendants report. If EPA or the relevant State determines that the applicable requirements have not been satisfactorily completed, then, within 30 days of a written request by either EPA or the State, Defendant will notify EPA and the applicable State in writing of an expedited schedule for completion, which schedule shall be subject to approval by EPA and the State, and will take the appropriate steps to complete any applicable requirements that remain in accordance with the approved schedule.

15. As to the Prosper Facility only, Defendant will provide Notice and a Certification of Completion to EPA and Texas, at the addresses specified in Section XIII (Notices), signed and certified in accordance with paragraph 25, (a) when it has fully completed the lagoon closure requirements associated with the three lagoons located north of the former layer barns, and (b) when it has fully completed the lagoon closure requirements associated with the lagoon located at the south end of the Prosper Facility, both of which are set forth in Appendix B-1. In addition, Defendant shall notify EPA and Texas at least 30 days prior to the date Defendant intends to have completed these obligations, to enable EPA and Texas to begin inspection of the lagoon closure and determine compliance. With respect to the Prosper lagoon closures, after receipt of Defendant's Notice and Certification of Completion, if EPA determines that the actions taken comply with the requirements of this Consent Decree, EPA shall so notify Defendants within 90

days of receipt of Defendants report. If EPA or the relevant State determines that the applicable requirements have not been satisfactorily completed, then, within 30 days of a written request by either EPA or the State, Defendant will notify EPA and the applicable State in writing of an expedited schedule for completion, which schedule shall be subject to approval by EPA and the State, and will take the appropriate steps to complete any applicable requirements that remain in accordance with the approved schedule.

16. In addition, for purposes of the permitting requirement set forth in Paragraph 19, only, Defendant will provide a separate Notice and a Certification of Completion to EPA and Texas, at the addresses specified in Section XIII (Notices), signed and certified in accordance with paragraph 25, when it has fully completed Paragraphs 1 through 8 of Appendix B-1 (pertaining to lagoon closure, but not including the groundwater monitoring requirements) as to the three lagoons located north of the former layer barns and the one lagoon located at the south end of the Prosper Facility.

#### B. LAND APPLICATION, GRAZING, AND LAND MANAGEMENT

17. Defendant shall undertake and complete all actions specified in Appendices C (Nutrient Management Plans, Land Application, Grazing, and Land Management) and F (Grazing Plan) at the Springhill, Vernon-Chillicothe, Prosper, Boogie Hill, Nebo Ranch, Granite Ranch, and Ravia Facilities, as applicable.

#### C. MORTALITY MANAGEMENT

18. Defendant shall comply with the Mortality Management Requirements in Appendix D at the Vernon-Chillicothe Facility, the Springhill Facility, the Prosper Facility, the

Boogie Hill Facility, the Nebo Ranch, and the Ravia Facility, unless such facility is not growing poultry.

D. PERMITS

19. With respect to the Prosper Facility, within 180 days of entry of this Decree, Defendant shall submit an administratively complete and accurate application for coverage under the Texas Concentrated Animal Feeding Operation General Permit, TXG920000, to the State of Texas, with copies provided to EPA and TCEQ as provided in Section XIII (Notices). If, no later than 180 days after entry of this Decree, Mahard has (a) completed Paragraphs 1 through 8 of Appendix B-1 (pertaining to lagoon closure, but not including the groundwater monitoring requirements) as to the three northern lagoons and the one southern lagoon at the Prosper Facility, and (b) submitted a Notice and Certificate of Completion to EPA and Texas in accordance with Paragraph 16, above, Defendant shall not be required to submit the permit application described in this Paragraph.

20. Except for the Prosper Facility, Defendant shall maintain compliance with all applicable CAFO permits at each Facility.

E. PUBLIC WATER SUPPLIES

21. Defendant shall undertake and complete all actions specified in Appendix G (Public Water Supply Requirements for the Vernon-Chillicothe Facility) by the deadlines set forth therein.

F. MANURE STORAGE AT RAVIA

22. No later than thirty (30) Days prior to the introduction of live birds to any of the three houses utilizing scraper systems at the Ravia Facility, Defendant shall construct a covered,

concrete-lined manure storage structure to contain the manure generated at any of the three houses equipped with scraper systems.

## VI. REPORTING REQUIREMENTS

23. Defendant shall submit to the United States, to the State of Texas (with respect to the Texas Facilities), and to the State of Oklahoma (with respect to the Oklahoma Facilities), the following reports:

a. Defendant shall submit a semi-annual report, due no later than thirty (30) Days after July 30 and January 30 following the lodging this Consent Decree, until termination of this Decree pursuant to Section XVII, for the preceding six month period that complies with the requirements of Appendix E (Reporting Requirements) and includes:

- i. a listing of each Decree requirement that Defendant was to commence, complete, or undertake during the reporting period, including a citation to the relevant Consent Decree provision;
- ii. a brief summary of the activities Defendant has undertaken pursuant to each such requirement;
- iii. the deadline for completion of each such requirement and the date Defendant claims to have satisfied such requirement, if applicable; and
- iv. if Defendant fails to take any required action, Defendant must state so in the report.

b. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States, the State of Texas (with respect to the Texas Facilities), and the State of Oklahoma (with respect to the Oklahoma Facilities) of such violation and its likely duration, in writing, within ten (10) Days of the Day Defendant first becomes aware of the violation, or should reasonably have become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall so state in the report. Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

c. Whenever any violation of this Consent Decree or any other event affecting Defendant's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA, the State of Texas (with respect to a violation at any Texas Facility), and the State of Oklahoma (with respect to a violation at any Oklahoma Facility) orally and by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

24. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

25. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party, and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments, were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the 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 knowingly and willfully submitting a materially false statement.

26. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

27. Any information provided pursuant to this Consent Decree may be used by the United States or the States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

28. Approval of Deliverables. Defendant shall submit any plan, report, or other item that it is required to submit for approval pursuant to this Consent Decree to EPA and the applicable State. EPA and the applicable State may approve the submission or decline to approve it and provide written comments. Within fifteen (15) Days of receiving written comments from EPA and the applicable State, Defendant shall either (i) alter the submission consistent with the written comments and resubmit the submission to EPA and the appropriate State for final approval, (ii) respond to the EPA and the appropriate State with comments or

additional information, if so requested; or (iii) submit the matter for dispute resolution under Section IX (Dispute Resolution) of this Decree. Upon receipt of final approval of the submission from EPA and the applicable State, or upon completion of the submission pursuant to dispute resolution, Defendant shall implement the submission in accordance with the schedule in the approved submission.

**VII. STIPULATED PENALTIES**

29. Defendant shall be liable for Stipulated Penalties to the United States and the States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (per day per violation, unless otherwise noted)</b>
a. Failure to pay the civil penalties or attorneys’ fees as specified in Section IV	\$10,000
b. Failure to provide a copy of this Consent Decree to any proposed transferee or to provide written notice to the Plaintiffs of the prospective transfer, as required by Paragraph 4	\$5,000
c. Failure to submit an application for a Texas CAFO General Permit, if required by Paragraph 19	\$500 per day per violation for the first 21 days, \$1,000 per day per violation for the next 21 days; \$2,500 per day per violation thereafter



<b>Consent Decree Violation</b>	<b>Stipulated Penalty (per day per violation, unless otherwise noted)</b>
d. Failure to construct a manure storage structure at Ravia and failure to properly remove and dispose of waste, as required by Paragraph 22	\$500 per day per violation for the first 21 days, \$1,000 per day per violation for the next 21 days; \$2,500 per day per violation thereafter
e. Failure to implement or to comply with any requirement to close or remove a waste retention structure or lagoon, as set forth in Appendix B-1, Section I or Section II or Appendix B-2	\$500 per day per violation for the first 21 days, \$1,000 per day per violation for the next 21 days; \$2,500 per day per violation thereafter
f. Failure to implement or comply with any requirement to conduct ground water monitoring as required by Appendix B-1, Section III or Appendix B-2	\$500 per day per violation for the first 21 days, \$1,000 per day per violation for the next 21 days; \$2,500 per day per violation thereafter
g. Failure to submit to EPA and the appropriate state a proposed Nutrient Management Plan as required by Appendix C, Section I	\$500 per day per violation for the first 21 days, \$1,000 per day per violation for the next 21 days; \$2,500 per day per violation thereafter
h. For the disposal or land application of Waste, Wastewater, Manure, or Sludge in violation of Appendix C, Section II	\$3,000 per violation
i. For failing to erect or maintain fencing that would reasonably be expected to ensure that cattle or other livestock do not graze on a field designated as “No Grazing” in violation of the terms in Appendix C	\$500 per day per Facility for the first 21 days; \$750 per day per Facility for the next 21 days; \$1,000 per day per Facility thereafter

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (per day per violation, unless otherwise noted)</b>
j. For permitting cattle or other livestock to graze on a field designated as “Restricted Grazing,” where such grazing activities are materially inconsistent with the rotational grazing requirements set forth in Appendix G	\$500 per day per Facility for the first 21 days; \$750 per day per Facility for the next 21 days; \$1,000 per day per Facility thereafter
k. Failure to maintain, cut and remove vegetation on any Land Management Unit where such requirements apply in accordance with Paragraph 45 of Appendix C	\$1,000 per day per Facility
l. Failure to maintain buffer strips, as required by Appendix C, Section IV	\$250 per day for the first 21 days; \$500 per day for the next 21 days; \$1,000 per day thereafter
m. Failure to comply with the requirements pertaining to composting and mortality management, as set forth in by Appendix D	\$250 per day for the first 21 days; \$500 per day for the next 21 days; \$1,000 per day thereafter
n. Failure to timely submit semi-annual reports or any other report or submittal required by this Consent Decree	\$250 per day for the first 21 days; \$500 per day for the next 21 days; \$1,000 per day thereafter
o. Failure to permit entry to EPA, a state, or their authorized representatives to any facility covered by this Decree, as required by Section X	\$500 per day (until the day on which Mahard notifies EPA or the State that access is granted)
p. Failure to comply with any of the requirements of Appendix G regarding public water supply	\$250 per day for the first 21 days; \$500 per day for the next 21 days; \$1,000 per day thereafter

<b>Consent Decree Violation</b>	<b>Stipulated Penalty (per day per violation, unless otherwise noted)</b>
q. Any other violation of this Consent Decree	\$1,000

30. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within thirty (30) Days of receiving a written demand from the United States or either of the States. Defendant shall pay 50 percent of the total stipulated penalty amount due to the United States and 50 percent to the applicable State, unless otherwise directed.

31. The United States or the States may, in the unreviewable exercise of their discretion, reduce or waive Stipulated Penalties otherwise due that sovereign under this Consent Decree. The determination by one sovereign not to seek Stipulated Penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other sovereign from seeking the full amount of its share of the Stipulated Penalties.

32. Stipulated penalties shall continue to accrue as provided in Paragraphs 29 and 30, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA and the States that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States or the States within thirty (30) Days of the

effective date of the agreement or the receipt of EPA or the States' decision or order.

b. If the dispute is appealed to the Court and the United States and the States prevail in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

33. All stipulated penalties shall be paid in the manner set forth in Section IV (Penalties and Fees) of this Consent Decree.

34. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

35. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

36. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act or another applicable state or federal statutory or regulatory requirement, Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

## VIII. FORCE MAJEURE

37. A “force majeure event” is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree, including but not limited to the Defendant’s failure to sell any asset, obtain any financing, or otherwise enter into transactions that would enable it to pay the civil penalties set forth in Section IV (Penalties and Fees). Adverse weather conditions may, in some cases, constitute a force majeure event.

38. Defendant shall provide notice to the United States and the States orally and by electronic or facsimile transmission as soon as possible, but not later than four (4) Days after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice to the United States and the States, as provided in Section XIII of this Consent Decree (Notices), within ten (10) Days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant’s past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant’s rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure as to the subject event.

39. If the United States and the applicable State agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. The Plaintiffs will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

40. If the United States and the applicable State do not agree that a force majeure event has occurred, or do not agree to the extension of time sought by Defendant, the Plaintiffs shall notify Defendant in writing of their decision. If Defendant elects to invoke the Dispute Resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of Plaintiffs' notice. In any such proceeding, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Defendant gave the notice required by Paragraph 38, that the force majeure event caused any delay Defendant claims was attributable to that event, and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

#### IX. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section IX shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

42. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered

to have arisen when Defendant sends the United States and the applicable State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and the applicable State shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

43. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the applicable State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

44. The United States and the applicable State shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and the applicable State. The Plaintiffs' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

45. Judicial Review. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the applicable State, in accordance with Section

XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

46. The United States and the applicable State shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

47. In any dispute brought under Paragraph 41, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and the Act.

48. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32, above. If Defendant does not prevail on the disputed issue, Stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### X. INFORMATION COLLECTION AND RETENTION

49. The United States, the States, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any Facility covered which, at the time of entry, is subject to this Consent Decree, at all reasonable times, upon presentation of



credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

Inspections conducted by EPA, ODAFF, or their representatives will be in conformance with the relevant provisions of EPA's *Routine Biosecurity Procedures for EPA Personnel Visiting Farms, Ranches, Slaughterhouses and other Facilities with Livestock and Poultry*, issued December 10, 2001. Inspections conducted by TCEQ and its representatives will be in conformance with the *TCEQ CAFO Investigator Manual*, issued in April 2002, and any subsequent versions of this manual.

50. Upon request, Defendant shall provide EPA and the States, or their authorized representatives, splits of any samples taken by Defendant. Upon request, EPA and the States shall provide Defendant, or its authorized representatives, splits of any samples taken at any of Defendant's Facilities by EPA or either State.

51. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all

material documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Defendant's performance of its obligations under this Consent Decree. If any single Facility or Appendix is terminated prior to the termination of the Consent Decree, as to the documents that relate to Defendant's performance of its obligations at that Facility (or under that Appendix), this document retention requirement shall extend until five (5) years after the termination of the Consent Decree as to that Facility or Appendix. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, the United States or either State may request copies of any documents, records, or other information required to be maintained under this Paragraph.

52. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the States at least 90 (ninety) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the States, Defendant shall deliver any such documents, records, or other information to EPA, TCEQ, or ODAFF. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted

by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

53. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2. Information held by the State of Texas will be governed by the provisions of the Texas Public Information Act, Tex. Gov’t Code §§ 552.001-552.353.

54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

### A. COVENANT NOT TO SUE BY THE UNITED STATES

55. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Decree, and except as specifically provided below, the United States covenants not to sue or take administrative action against Mahard Egg Farm, Inc. concerning:

- a. the violations the Plaintiffs specifically alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree;
- b. the civil claims of the Plaintiffs under sections 301, 309(b)

and (d) of the Clean Water Act, 33 U.S.C. §§ 1311, 1319(b) and (d), for the unauthorized discharge of pollutants in violation of the Clean Water Act at, or from, the following facilities, through the date of lodging: Prosper, Springhill and Vernon-Chillicothe in Texas, and Granite Ranch, Boogie Hill, Nebo Ranch, and Ravia in Oklahoma;

c. the civil claims of the Plaintiffs for any violations of the state or federal CAFO General Permit at the following facilities, through the date of lodging: Prosper, Springhill and Vernon-Chillicothe in Texas, and Granite Ranch, Boogie Hill, Nebo Ranch, and Ravia in Oklahoma; and

d. the civil claims of the Plaintiffs for any violations of the Construction General Permit related to the Vernon-Chillicothe Facility, through the date of lodging of this Consent Decree.

**B. COVENANT NOT TO SUE BY THE STATE OF OKLAHOMA**

56. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Decree, and except as specifically provided below, the State of Oklahoma covenants not to sue or take administrative action against Mahard Egg Farm, Inc. concerning:

a. the violations the Plaintiffs specifically alleged in this Decree and the Complaint filed in this action, through the date of lodging of this Consent Decree;

b. civil claims of the State of Oklahoma under Title 2 O.S. § 2-18.1, at the following

facilities, through the date of lodging: Nebo Ranch, Boogie Hill, Granite Ranch and Ravia;

c. the civil claims of the State of Oklahoma for any violations of the Oklahoma Concentrated Animal Feeding Operations Act, Title 2 O.S. § 20-40 et. seq., at the following facilities, through the date of lodging: Nebo Ranch, Boogie Hill, Granite Ranch and Ravia;

d. the civil claims of the State of Oklahoma for any violations of the Oklahoma Concentrated Animal Feeding Operations Permanent Rules 35:17-4-1 et. seq., at the following facilities, through the date of lodging: Nebo Ranch, Boogie Hill, Granite Ranch and Ravia; and

e. the civil claims of the State of Oklahoma for any violation of the Poultry Waste Applicators Certification Permanent Rules, 35:17-7-1, et seq., through the date of lodging.

C. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY THE STATE OF TEXAS

57. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Decree, and except as specifically provided below in paragraphs 58 and 59, the State of Texas covenants not to sue or take administrative action against Mahard Egg Farm, Inc., concerning:

- a. the violations the Plaintiffs have specifically alleged in this Decree and in the Complaint filed in this action, through the date of lodging of this Consent Decree;
- b. the civil claims of the State of Texas under Chapter 26 of the Texas Water Code, and the regulations promulgated thereunder, for the unauthorized discharge of agricultural waste, pollutants or contaminants at, or from, the Prosper, Springhill and Vernon-Chillicothe Facilities, through the date of lodging;
- c. the civil claims of the State of Texas under Chapter 341, Subchapter C, of the

Texas Health and Safety Code, and the regulations at 30 Tex. Admin. Code ch. 290, subch. D, for drinking water violations at the Prosper, Springhill and Vernon-Chillicothe Facilities through the date of lodging;

- d. the civil claims of the State of Texas for any violations of the state CAFO General Permit or regulations found at 30 Tex. Admin. Code ch. 321, subch. B, at the Prosper, Springhill, and Vernon-Chillicothe facilities, through the date of lodging;
- e. the civil claims of the State of Texas for any violations of the Construction General Permit TXR15000 or by 30 Tex. Admin. Code § 281.25(a)(4), related to the Prosper, Springhill, and Vernon-Chillicothe Facilities, through the date of lodging;
- f. the civil claims of the State of Texas for any violations of state regulations pertaining to above ground storage tanks and management of waste, including 30 Tex Admin. Code chapter 355, at the Prosper, Springhill and Vernon-Chillicothe Facilities, through the date of lodging; and
- g. the civil claims of the State of Texas for any violations of the state regulations pertaining to composting, including 30 Tex. Admin. Code chapter 332, at the Prosper, Springhill, and Vernon-Chillicothe Facilities, through the date of lodging.

58. Notwithstanding any other provision of this Consent Decree, the State of Texas reserves all rights against Defendant with respect to liability for violations of environmental laws or regulations occurring after the Effective Date of this Consent Decree, except to the extent the conditions giving rise to such violations are being addressed by the injunctive relief required under this Consent Decree.

59. Nothing in this judgment shall prevent any governmental entity having authority to

regulate environmental conditions at the Texas Facilities from investigating environmental conditions that may arise or be discovered at the Facilities.

D. ADMINISTRATIVE ORDERS

60. In consideration of the actions that will be performed and the payments that will be made by the Defendant under the terms of this Consent Decree, and except as specifically provided below, the Plaintiffs covenant not to sue or take administrative action against Mahard Egg Farm, Inc., concerning violations of the following Administrative Orders:

- a.. EPA Administrative Orders, issued pursuant to the Clean Water Act:
  - i. CWA-06-2008-1755 (issued January 25, 2008) (Granite Ranch);
  - ii. EPA Admin. Order (No docket number available) (Boogie Hill), 1994;
  - iii. EPA Admin. Order; Docket No. VI-94-2565, May 17, 1994 (Prosper);
  - iv. EPA Admin. Order; Docket No. VI-94-2582, May 17, 1994 (Ravia);
  - v. EPA Admin. Order; Docket No. VI-94-2580, May 17, 1994 (Granite Ranch)
  - vi. EPA Findings of Violation and Order for Compliance; CWA Docket VI-98-1075, April 24, 1998 (Granite Ranch);
  - vii. EPA Consent Agreement and Consent Order; Docket No. CWA-6-99-1600 (Granite Ranch), November 11, 1999;
  - viii. EPA Findings of Violation and Order for Compliance; Docket No. CWA-06-2004-1998 (Granite Ranch), March 15, 2004;
  - ix. EPA Admin. Order (No docket number available) (Nebo Ranch), 1994;
  - x. EPA Consent Agreement and Final Order; Docket No. CWA-06-2005-1718

- (Granite Ranch), February 16, 2005;
- xi. EPA Consent Agreement and Final Order; Docket No. CWA-06-2006-1802  
(Granite Ranch), September 19, 2006;
  - xii. EPA Consent Agreement and Final Order (Nebo Ranch), September, 2006;
  - xiii. EPA Cease and Desist Admin. Order; Docket No. CWA-06-2007-1991,  
September 13, 2007 (Boogie Hill);
  - xiv. EPA Findings of Violation and Order for Compliance; Docket No. CWA-  
06-2008-1755 (Granite Ranch) January 24, 2008;
  - xv. EPA Admin. Order for Compliance, Docket No. CWA-06-2008-1826  
(Prosper) July 1, 2008;
- b. ODAFF Administrative Orders numbered 08-12-DLS; 08-171-DLS; 08-703-OGC;  
10-114-OGC; 10-117-OGC; 10-1281-OGC.
  - c. TCEQ Agreed Order, Docket No. 98-0115-AGR-E (Prosper), April 7, 1999

E. PLAINTIFFS' RESERVATIONS OF RIGHTS

- 61. [Intentionally left blank.]
- 62. These covenants extend only to the Defendant Mahard and its officers, employees,  
and agents, acting in their official capacities.
- 63. The United States and the States reserve all legal and equitable remedies available  
to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55-60.  
This Consent Decree shall not be construed to limit the rights of the United States or the States to  
obtain penalties or injunctive relief under the Act or implementing regulations, or under other  
federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph



55-60. Nothing in this Consent Decree shall affect or diminish the Plaintiffs' ability to conduct routine oversight and enforcement activities pertaining to Defendant's on-going operations following lodging of this Decree.

64. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, if conditions at, or caused or contributed to by, the Facilities, previously unknown to the Plaintiffs, are discovered, and these previously unknown conditions, together with any other relevant information, indicates that the provisions of this Consent Decree are not protective of human health or the environment. Previously unknown conditions shall not include any conditions that are described or referred to in information in the possession of the Plaintiffs on the date of lodging of this Consent Decree.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States and the States do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

66. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the States against any third parties, not party to this Consent Decree, nor does it

limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

67. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## XII. COSTS

68. The United States, State of Oklahoma, and Defendant shall bear their own costs of this action, including attorneys' fees. The State of Texas shall collect its attorneys' fees and costs in accordance with Paragraph 11 of this Decree. In addition, the United States and the States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## XIII. NOTICES

69. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

### To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-09279

and

Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

and

Director, Compliance Assurance and Enforcement Division  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 900  
Dallas, Texas 75202-2733

To the State of Texas:

Kellie E. Billings  
Office of the Attorney General of Texas  
Environmental Protection and Administrative Law Division  
P.O. Box 12548, MC-018  
Austin, Texas 78711-2548

and

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

and (for the Vernon-Chillicothe Facility)

Water Section Manager  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Blvd.  
Abilene, Texas 79602-7833

and (for the Prosper and Springhill Facilities)

Water Section Manager  
Dallas/Ft. Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Forth Worth, Texas 76118-6951

To the State of Oklahoma:

Teena Gunter  
General Counsel  
Oklahoma Department of Agriculture, Food and Forestry  
P.O. Box 528804  
Oklahoma City, OK 73152

and

Clayton Eubanks, AAG  
Office of the Attorney General  
Environmental Protection Unit  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

To Defendant:

Mr. Ernest A. Mahard, Jr.  
President  
Mahard Egg Farm, Inc.  
P.O. Box 248  
Prosper, Texas 75870

and

Leonard H. Dougal  
Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, TX 78701

70. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

71. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties

in writing.

#### XIV. EFFECTIVE DATE

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

#### XV. RETENTION OF JURISDICTION

73. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### XVI. MODIFICATION

74. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties or, in the case of a modification that addresses one Facility only, the written agreement shall be signed by the United States, the Defendant, and the applicable State. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

75. The parties may, by written agreement, modify a schedule of compliance deadlines so long as it is not materially inconsistent with the obligations set forth in this Consent Decree. Any such modification may be made by written agreement of the United States, the Defendant, and the applicable State(s), and will be effective upon the Parties' joint notice to the Court.

#### XVII. TERMINATION

76. Except as provided in subsection A (Paragraphs 79-83), below, after Defendant has completed all of the requirements of Section V (Compliance Requirements) of this Consent Decree, or has completed the Compliance Requirements set forth in Section V (Compliance

Requirements) as to any Facility (whether one or more), and has paid the civil penalties, fees, and related interest set forth in Section IV (Penalties and Fees) and all accrued Stipulated Penalties (pertaining to any Facility or requirement of the Consent Decree), Defendant may serve upon the United States and the States a Request for Termination of the Consent Decree obligations, or of the Termination of obligations as to any Facility (whether one or more), stating that Defendant has satisfied those requirements as to that certain Facility or Facilities, together with all necessary supporting documentation.

77. Following receipt of Defendant's Request for Termination by the United States and the States, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree, whether in whole or as to one or more of the Facilities. If the United States and the appropriate State (or States) agrees, the Decree may be terminated, and the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States and the appropriate State do not agree that the Decree (or any part thereof) may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Section IX, until sixty (60) Days after service of its Request for Termination.

A. PARTIAL TERMINATION OF THE CONSENT DECREE AS TO THE PROSPER FACILITY IN THE EVENT OF LAND DEVELOPMENT

79. The Parties acknowledge that, at the time of lodging of this Decree, Defendant has entered into a sale agreement to transfer or has transferred certain real property, comprising some portion or all of the Prosper Facility, to Forest City Prosper, Limited Partnership ("FC Prosper"), an entity formed for the purpose of developing the land for residential or commercial purposes. If,

and to the extent that, FC Prosper submits to the State of Texas a Notice of Intent for coverage under the Texas Construction General Permit for Storm Water, TXR150000, or otherwise obtains coverage under this permit or any other construction storm water permit, issued pursuant to 30 Tex. Admin. Code § 281.25(a)(4), or pursuant to 33 U.S.C. § 1342 and 40 C.F.R. Part 122 (hereinafter referred to as the “Applicable Construction Storm Water Permit”) for any portion of the Prosper Facility, Defendant may terminate, or seek termination of, this Consent Decree as to that portion of the Prosper Facility in accordance with this Subsection A. If no authorization under the applicable construction storm water permit is granted to FC Prosper for development activities at the Prosper Facility, the provisions of Paragraphs 77-79 shall apply to Defendant’s termination of this Consent Decree at the Prosper Facility.

80. For purposes of this subsection A (Paragraphs 79 through 83) of this Consent Decree, a “Development Tract” is a subsection of the Prosper Facility, the location of which is identified with specificity in a Notice of Intent for coverage under the Applicable Construction Storm Water Permit, and in the Storm Water Pollution Prevention Plan developed pursuant to such Permit.

81. If, and to the extent that, FC Prosper obtains coverage under an applicable construction storm water permit for any Development Tract, as to that Development Tract, Defendant may serve upon the United States and the State of Texas, in accordance with the requirements of Section XIII (Notices), a Notice of Partial Termination of the Consent Decree as to the Prosper Facility (hereinafter “Notice”) when the following conditions have been satisfied:

- a. Defendant has paid all civil penalties, fees, and related interest due under this Decree;
- b. Defendant has paid all stipulated penalties and related interest

demanded as to any requirement of this Decree concerning the Prosper Facility;

c. If the Development Tract that is subject of the Notice contains lagoons subject to closure requirements under Appendix B-1, Defendant has submitted a Notice and a Certification of Completion to EPA and the State of Texas, as required by Section V (Compliance Requirements), certifying that it has fully completed the lagoon closure requirements applicable at the Prosper Facility, as set forth in Appendix B-1, including but not limited to any required groundwater monitoring, and has taken any actions thereafter required by EPA or the State of Texas pertaining to such lagoon closures;

d. Defendant has installed and maintained all required buffer strips at the Development Tract, as required by Section IV of Appendix C to this Consent Decree;

e. Defendant is in compliance with all applicable land management requirements set forth in Appendix C, Subsections I through IV, for the Prosper Facility;

f. Defendant has complied with Paragraph 19 (Permits), as applicable;

g. FC Prosper has completed its construction activity and has submitted a Notice of Termination of coverage under the Applicable Construction Storm Water Permit for the Development Tract that is subject of Defendant's Notice, and has indicated that "[f]inal stabilization has been achieved on all portions of the site that are the responsibility of the Operator and all silt fences and other temporary erosion controls have either been removed, or scheduled for removal as defined in the storm water pollution prevention plan";

h. Defendant has provided such Notice of Termination of coverage under the Applicable Construction Storm Water Permit to the United States and the State of Texas along with its Notice; and

i. the Development Tract has been re-zoned to a non-agricultural use.



82. In any Notice of Partial Termination of the Consent Decree as to the Prosper Facility submitted by Defendant to the United States and Texas pursuant to this Section, Mahard shall provide a map identifying with specificity the location of the Development Tract and include a certification, in accordance with the requirements of Paragraph 25, above, that it has satisfied the requirements of Paragraph 81 (a) through (i).

83. No sooner than 45 days after Defendant has submitted to the United States and Texas a Notice of Partial Termination of the Consent Decree as to the Prosper Facility in accordance with this Subsection A, Defendant may file a motion with the Court terminating the Consent Decree as to the Development Tract. If the United States or Texas disagrees that the requirements for Termination set forth herein have been satisfied, either Party may oppose such motion and seek judicial review thereof.

84. Any termination of this Consent Decree pursuant to this Section XVII shall not affect or otherwise terminate the Plaintiffs' Covenants Not to Sue Defendant, which are conditioned upon Defendant Mahard's performance of its obligations under this Consent Decree, pursuant to Section XI (Effect of Settlement/Reservation of Rights).

#### XVIII. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and Tex. Water Code § 7.110. Each of the Plaintiffs reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, inadequate, or inconsistent with the law. Defendant consents to entry of this Consent Decree without further notice. Plaintiffs shall serve on Defendant any documents or pleadings filed with the Court.

## XIX. SIGNATORIES/SERVICE

86. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

88. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States and the States have notified Defendant in writing that it no longer supports entry of the Decree.

89. Defendant and Plaintiffs each agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons with respect to this Consent Decree.

## XX. INTEGRATION

90. This Consent Decree, including its Appendices and any Plaintiff-approved post-entry work plans or submittals required by this Decree, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Plaintiff-approved work plans or submittals made pursuant to this Decree, no other document, nor any representation whether formal or informal, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

## XXI. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the States, and Defendant.

## XXII. APPENDICES

92. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the List of Facilities.

“Appendix A-2” contains Maps of Prosper, Springhill, Vernon-Chillicothe, Ravia, Boogie Hill, Granite Ranch, and Nebo Ranch, identifying land management units, grazing restrictions and locations of buffer strips.

“Appendix A-3” contains Maps of Prosper, Springhill, Boogie Hill, Ravia, and Granite Ranch Facilities, with inactive poultry houses numbered.

“Appendix B-1” is entitled “Lagoon Removal and Facility Closure Requirements”

“Appendix B-2” is entitled “Nebo Ranch Vegetative Filter Strip Map and Engineered Vegetative Filter Strip for the Control of Nutrient Laden Stormwater Runoff (Rev. Nov. 22, 2010)”

“Appendix B-3” is entitled “Approved Lagoon Closure Plan for the Boogie Hill Facility”

“Appendix C” is entitled “Nutrient Management Plans, Land Application, Grazing and Land Management”

“Appendix D” is entitled “Mortality Management”

“Appendix E” is entitled “Reporting Requirements”

“Appendix F” is entitled “Grazing Plan”

“Appendix G” is entitled “Public Water Supply Requirements for the Vernon-Chillicothe Facility”

**Final Page of Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

Dated and entered this \_\_ day of \_\_\_\_\_, \_\_\_\_.

---

UNITED STATES DISTRICT JUDGE  
Northern District of Texas

**Signature Page to Consent Decree in:**

***United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.***

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc. (N.D. Tex.):

**FOR PLAINTIFF, UNITED STATES OF AMERICA:**

Date: \_\_\_\_\_

\_\_\_\_\_  
IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7415  
Washington, DC 20044-7415  
(202) 514-2718

Date: \_\_\_\_\_

\_\_\_\_\_  
NICOLE VEILLEUX  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 616-8746  
(202) 514-8395 (fax)  
[nicole.veilleux@usdoj.gov](mailto:nicole.veilleux@usdoj.gov)

JAMES T. JACKS  
UNITED STATES ATTORNEY

\_\_\_\_\_  
Lisa R. Hasday  
Assistant United States Attorney  
Texas State Bar No. 24075989  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699  
Telephone: 214.659.8737  
Facsimile: 214.767.2916  
Email: [Lisa.Hasday@usdoj.gov](mailto:Lisa.Hasday@usdoj.gov)

**Signature Page to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**

Date: \_\_\_\_\_

\_\_\_\_\_  
ALFREDO ARMENDARIZ  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6

Date: \_\_\_\_\_

\_\_\_\_\_  
ELLEN CHANG-VAUGHAN  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Ave.  
Dallas, TX 75202-2733

**Signature Page to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

**FOR PLAINTIFF UNITED STATES OF AMERICA (continued):**

Date: \_\_\_\_\_

\_\_\_\_\_  
CYNTHIA GILES  
Assistant Administrator for the Office of Enforcement and  
Compliance Assurance  
U. S . Environmental Protection Agency  
Washington, D.C.

Date: \_\_\_\_\_

\_\_\_\_\_  
JAMES VINCH  
Attorney  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Mail Code 2243A  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

**Signature Page to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

**FOR PLAINTIFF, THE STATE OF TEXAS:**

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

BILL COBB  
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE  
Chief, Environmental Law and Administrative Law Division

DAVID PREISTER  
Chief, Environmental Protection Section

Date: \_\_\_\_\_

\_\_\_\_\_  
KELLIE E. BILLINGS  
Texas State Bar No. 24042447  
Assistant Attorney General

THOMAS H. EDWARDS  
Texas State Bar No. 06461800  
Assistant Attorney General

Office of the Attorney General  
Environmental Protection and  
Administrative Law Division  
P.O. Box 12548, MC-018  
Austin, Texas 78711-2548  
Tel: (512) 463-2012  
Fax: (512) 320-0052



**Signature Page to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

**FOR PLAINTIFF, STATE OF OKLAHOMA:**

---

P. Clayton Eubanks, AAG OBA #16648  
Office of the Attorney General  
Environmental Protection Unit  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

---

Teena G. Gunter  
General Counsel  
Oklahoma Department of Agriculture, Food, and Forestry  
P.O. Box 528804  
Oklahoma City, OK 73152-8804

---

Jim Reese  
President, State Board of Agriculture

**Signature Page to Consent Decree in:**  
***United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.***

**FOR MAHARD EGG FARM, INC.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Mr. Ernest A. Mahard, Jr.  
President  
Mahard Egg Farm, Inc.  
P.O. Box 248  
Prosper, Texas 75870  
Telephone: (972) 347-2421  
Facsimile: (972) 347-2963

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Leonard H. Dougal  
State Bar No. 06031400  
Attorney for Mahard Egg Farm, Inc.  
Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, TX 78701  
Telephone: (512) 236-2000  
Facsimile: (512) 391-2122  
ldougal@jw.com

James D. Bradbury  
State Bar No. 02814500  
Attorney for Mahard Egg Farm, Inc.  
James D. Bradbury, PLLC  
201 Main Street, Suite 600  
Fort Worth, TX 78730  
Telephone: (817) 339-1105  
Facsimile: (817) 886-3495

## APPENDICES TO CONSENT DECREE

- Appendix A:      A-1: List of Facilities.
- A-2: Maps of Prosper, Springhill, Vernon-Chillicothe, Ravia, Granite Ranch, and Nebo Ranch, designating land management units, grazing restrictions and location of buffer strips.
- A-3: Maps of Prosper, Springhill, Boogie Hill, and Ravia Facilities, with inactive poultry houses numbered.
- Appendix B:      B-1: Lagoon Removal and Facility Closure Requirements
- B-2: Nebo Ranch Vegetative Filter Strip Map and Engineered Vegetative Filter Strip for the Control of Nutrient Laden Stormwater Runoff (Revised Nov. 22, 2010)
- B-3: Approved Lagoon Closure Plan for Boogie Hill
- Appendix C:      Nutrient Management Plans, Land Application, Grazing and Land Management
- Appendix D:      Mortality Management
- Appendix E:      Reporting Requirements
- Appendix F:      Grazing Plan
- Appendix G:      Public Water Supply Requirements at Vernon-Chillicothe

### **APPENDIX A-1: LIST OF FACILITIES**

1. Prosper Egg Farm, at 33.23 North, 96.867 West, 17087 Fishtrap Road, Prosper, in Denton and Collin Counties, Texas
2. Vernon-Chillicothe, at 34.349 North, 99.475 West, 21080 County Road 87 N, Chillicothe, in Wilbarger and Hardeman Counties, Texas
3. Springhill, at 33.284 North, 96.917 West, 10043 Coffey Rd., Aubrey, in Denton County, Texas
4. Nebo Ranch, at 34.398 North, 96.951 West, Route 1, Highway 77, Sulphur, in Murray County, Oklahoma
5. Granite Ranch, at 34.361 North, 96.584 West, Route 1, Box 25A, Milburn, in Johnston County, Oklahoma
6. Boogie Hill, at 34.637 West, 97.003 North, Route 2, Box 216A, Sulphur, in Garvin and Murray Counties, Oklahoma
7. Ravia, at 34.224 North, 96.758 West, Route 1, Ravia, in Johnston County, Oklahoma

All provided latitudes and longitudes represent the facility entrance from the nearest public road.

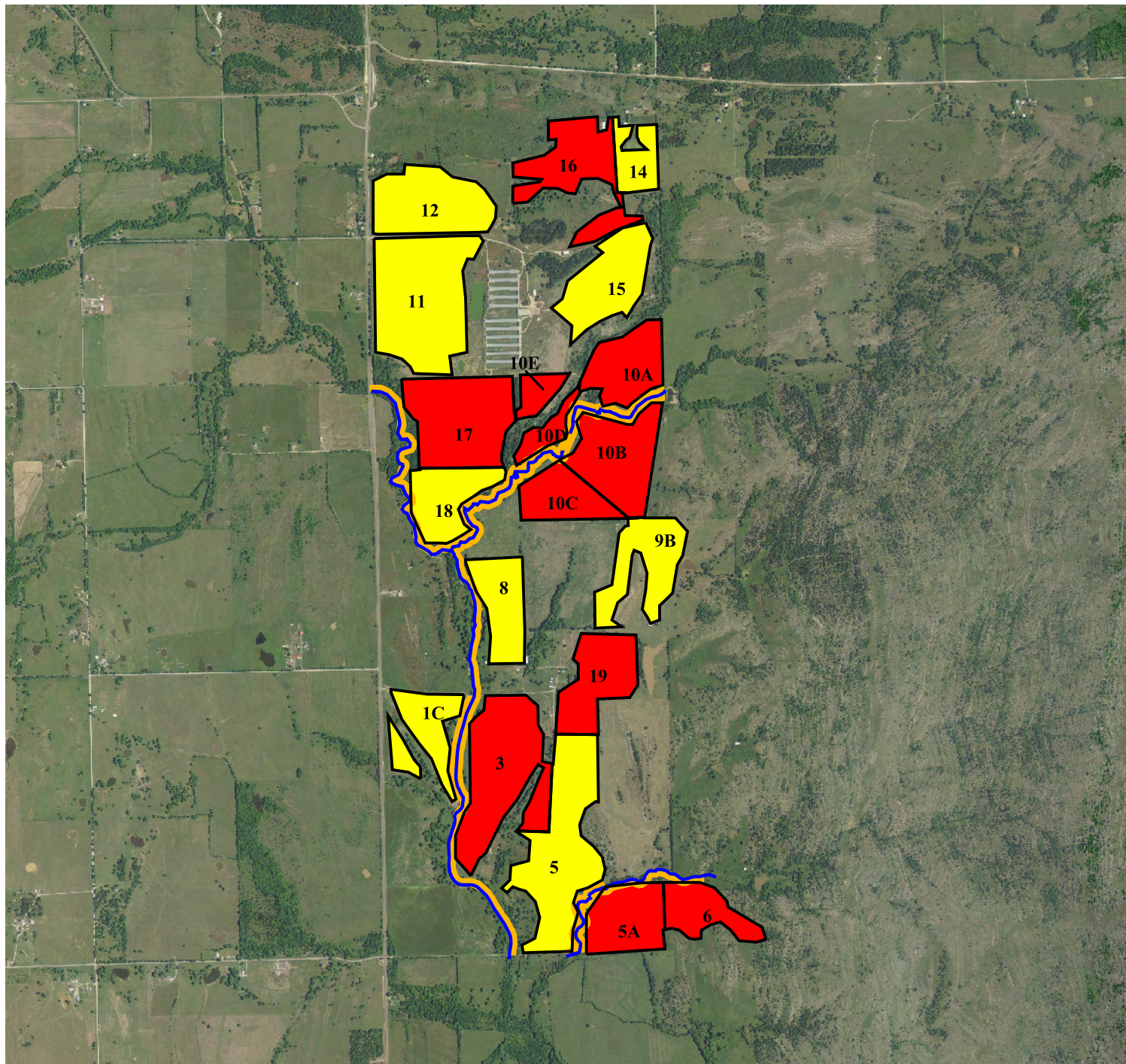
**Appendix A-2 to Consent Decree in:**  
***United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.***

Maps of Prosper, Springhill, Vernon-Chillicothe, Ravia, Granite Ranch, and Nebo Ranch,  
designating land management units, grazing restrictions and location of buffer strips






# Grazing Plan

Mahard Egg Farm  
Nebo Ranch  
Oklahoma Sites  
Date: 03/11/2011

Enviro-Ag Engineering, Inc.  
3404 Airway Blvd.  
Amarillo, TX 79118  
(806) 353-6123 FAX: (806) 353-4132



## Legend

-  LMU
-  Critical Waterway
-  100' Buffer
-  No Grazing
-  Restricted Grazing

Data formulated from  
samples taken on  
09/01/2010



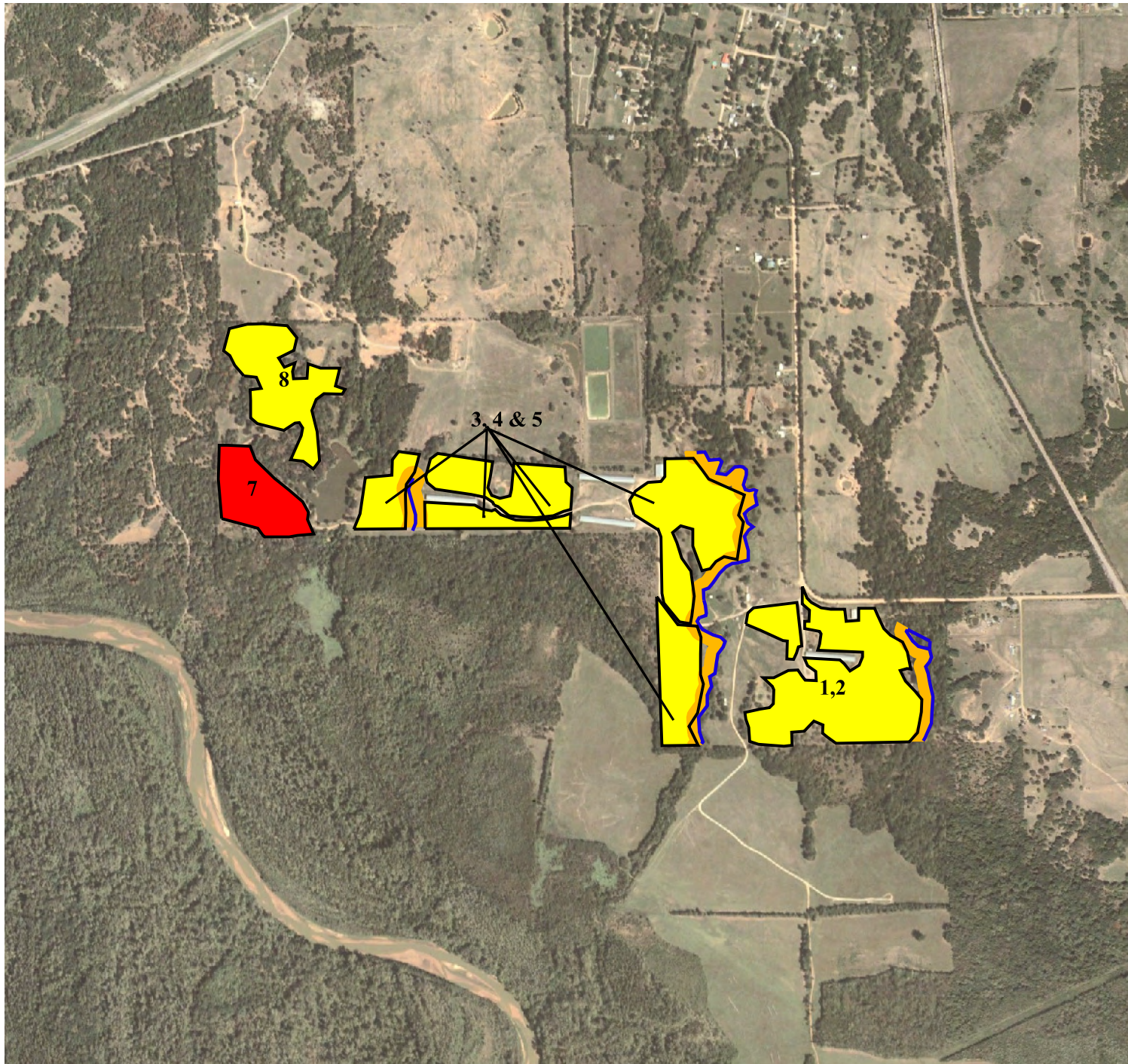
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Available at: <http://datagateway.nrcs.usda.gov/>  
Accessed 6 November 2009, And US Census Bureau, 2010 TIGER/Line Shapefile:Water for Oklahoma Available at <http://www.census.gov/cgi-bin/geo/shapefiles2010/layers.cgi> Accessed on 15 February 2011.








# Grazing Plan

Mahard Egg Farm  
Ravia Site  
Oklahoma Sites  
Date: 02/22/2011

Enviro-Ag Engineering, Inc.  
3404 Airway Blvd.  
Amarillo, TX 79118  
(806) 353-6123 FAX: (806) 353-4132

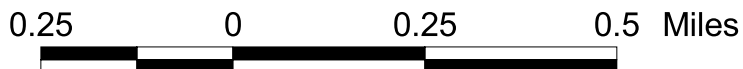


## Legend

-  LMU
-  Critical Waterway
-  100' Buffer
-  Restricted Grazing
-  No Grazing

Data formulated from  
samples taken on  
09/01/2010

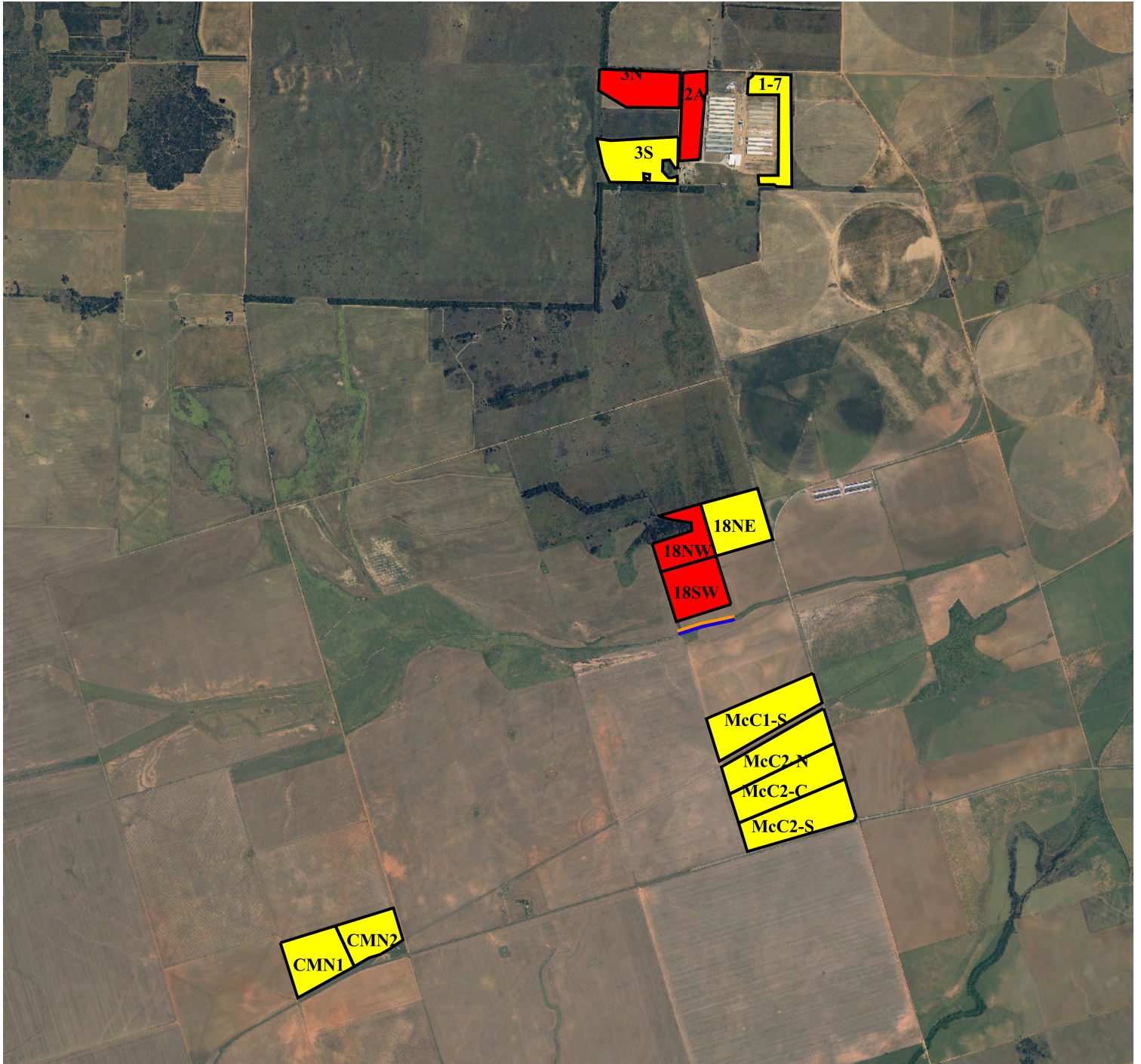
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Available at: <http://datagateway.nrcs.usda.gov/>  
Accessed 6 November 2009. And US Census Bureau, 2010 Tiger/Line  
Shapefile: Water for Oklahoma  
Available at <http://www.census.gov/cgi-bin/geo/shapefiles2010/layers.cgi>  
Accessed on 15 February 2011.








# Grazing Plan

Mayhard Egg Farms  
Vernon Site  
Texas Sites  
Date:02/22/2011

Enviro-Ag Engineering, Inc.  
3404 Airway Blvd.  
Amarillo, TX 79118  
(806) 353-6123 Fax: (806) 353-4132



## Legend

-  LMU
-  Critical Waterway
-  100' Buffer
-  Restricted Grazing
-  No Grazing

Data formulated from  
samples taken on  
08/30/2010

Source: USDA: NRCS, Geospatial Data Gateway for  
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Available at: <http://datagateway.nrcs.usda.gov/>  
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2010 TIGER/Line Shapefile:Water for Texas  
Available at <http://www.census.gov/cgi-bin/geo/shapefiles2010/layers.cgi>  
Accessed on 15 February 2011.

0.625 0 0.625 1.25 Miles



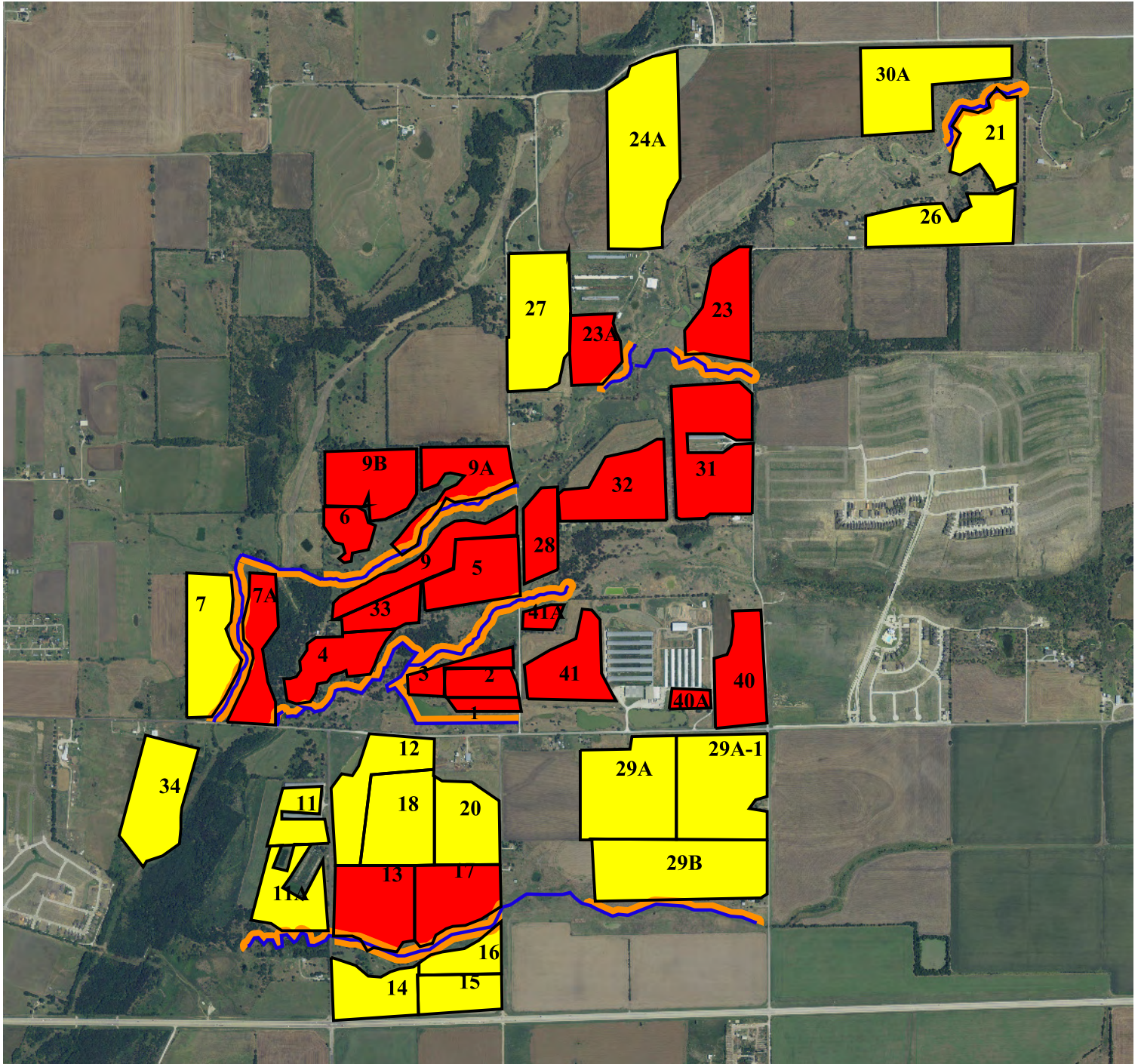
ENVIRO-AG  
**EAE**  
ENGINEERING, INC.



# Grazing Plan

Mahard Egg Farm  
 Prosper Site  
 Texas Sites  
 Date: 02/22/2011

Enviro-Ag Engineering, Inc.  
 3404 Airway Blvd.  
 Amarillo, TX 79118  
 (806) 3353-6123 FAX: (806) 353-4132

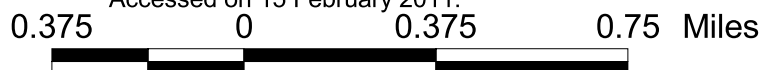


## Legend

- LMU
- Critical Waterway
- 100' Buffer
- Restricted Grazing
- No Grazing

Data formulated from samples taken on 09/02/2010

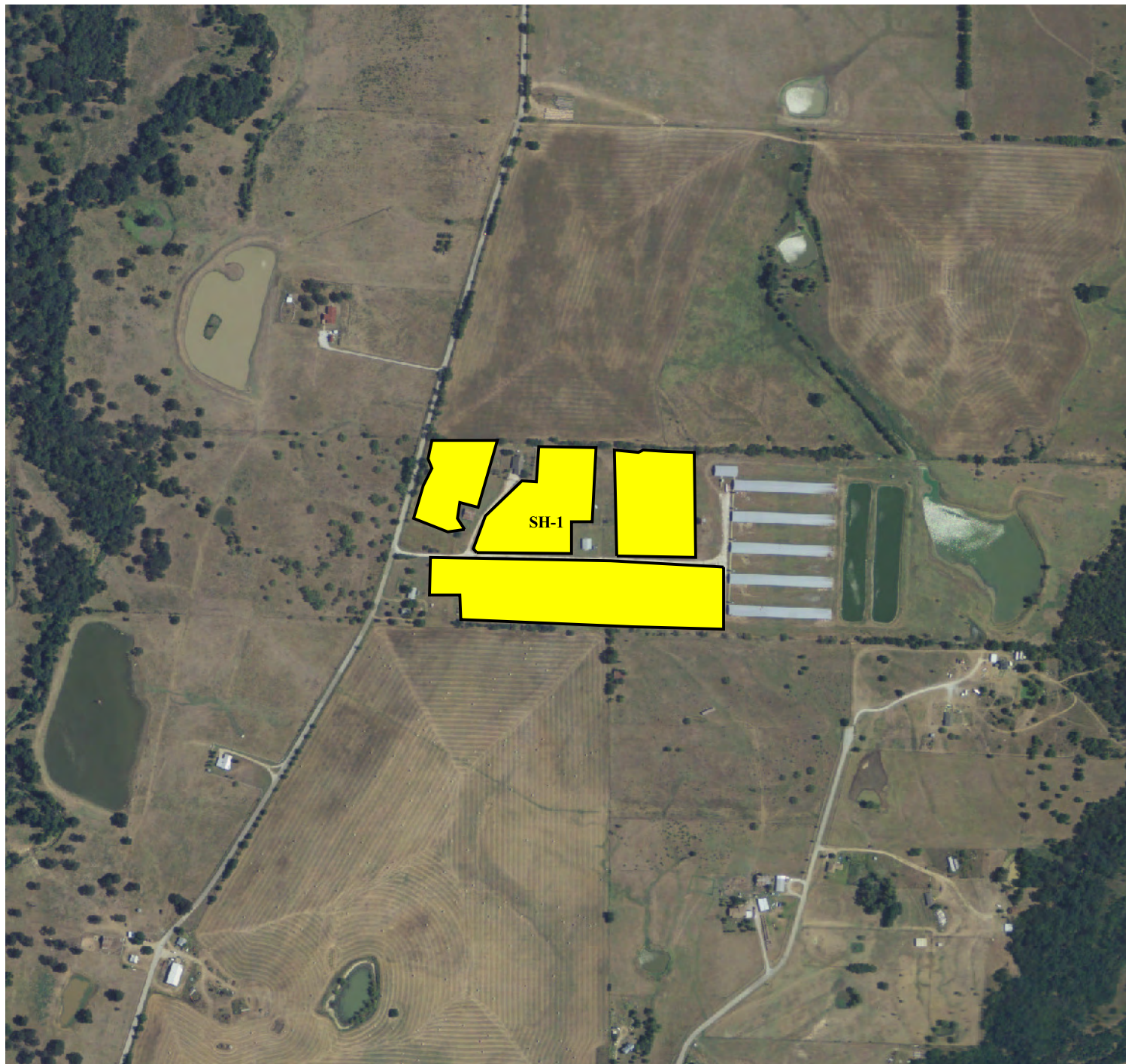
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 Available at <http://www.census.gov/cgi-bin/geo/shapefiles2010/layers.cgi>  
 Accessed on 15 February 2011.



# Grazing Plan

Mahard Egg Farm  
Spring Hill Site  
Texas Sites  
Date: 02/22/2011

Enviro-Ag Engineering, Inc.  
3404 Airway Blvd.  
Amarillo, TX 79118  
(806) 3353-6123 FAX: (806) 353-4132

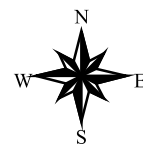
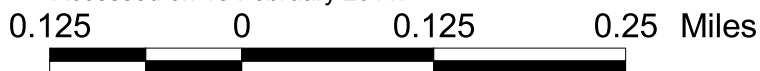


## Legend

-  LMU
-  Restricted Grazing
-  No Grazing

Data formulated from  
samples taken on  
09/02/2010

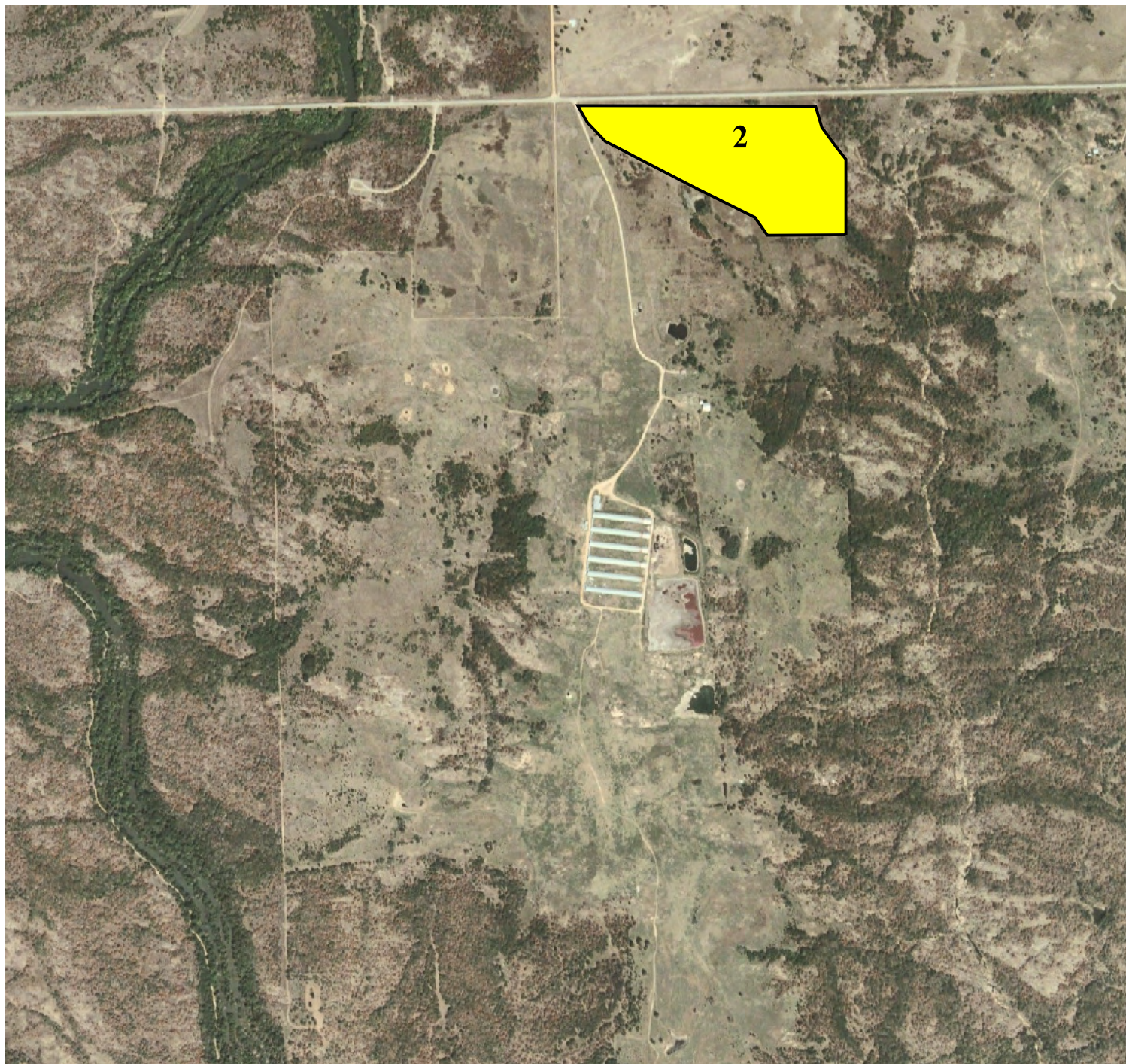
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Denton County, Texas.  
Available at: <http://datagateway.nrcs.usda.gov/>  
Accessed 6 November 2009, And US Census Bureau,  
2010 TIGER/Line Shapefile:Water for Texas  
Available at <http://www.census.gov/cgi-bin/geo/shapefiles2010/layers.cgi>  
Accessed on 15 February 2011.



# Grazing Plan

Mahard Egg Farm  
Granite Ranch  
Oklahoma Sites  
Date:02/16/2011

Enviro-Ag Engineering, Inc.  
3404 Airway Blvd.  
Amarillo, TX 79118  
(806) 353-6123 FAX: (806) 353-4132



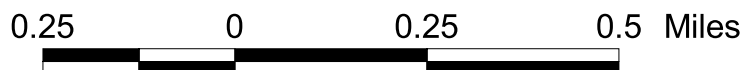
## Legend

-  LMU
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-  No Grazing

Source: USDA: NRCS, Geospatial Data Gateway for Johnston County, Oklahoma.  
Available at: <http://datagateway.nrcs.usda.gov/>  
Accessed 6 November 2009.



Data formulated from samples taken on 09/01/2010



**Appendix A-3 to Consent Decree in:**  
***United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.***

Maps of Prosper, Springhill, Boogie Hill, Ravia, and Granite Ranch Facilities,  
with inactive poultry houses numbered.

Springhill  
Facility

- 1
- 2
- 3
- 4
- 5



0 330 660 1,320  
Feet

### Springhill Inactive Poultry Houses (numbered)



# Boogie Hill Facility



## Boogie Hill Inactive Poultry Houses (numbered)

EPA Region 6  
Water Resources Section



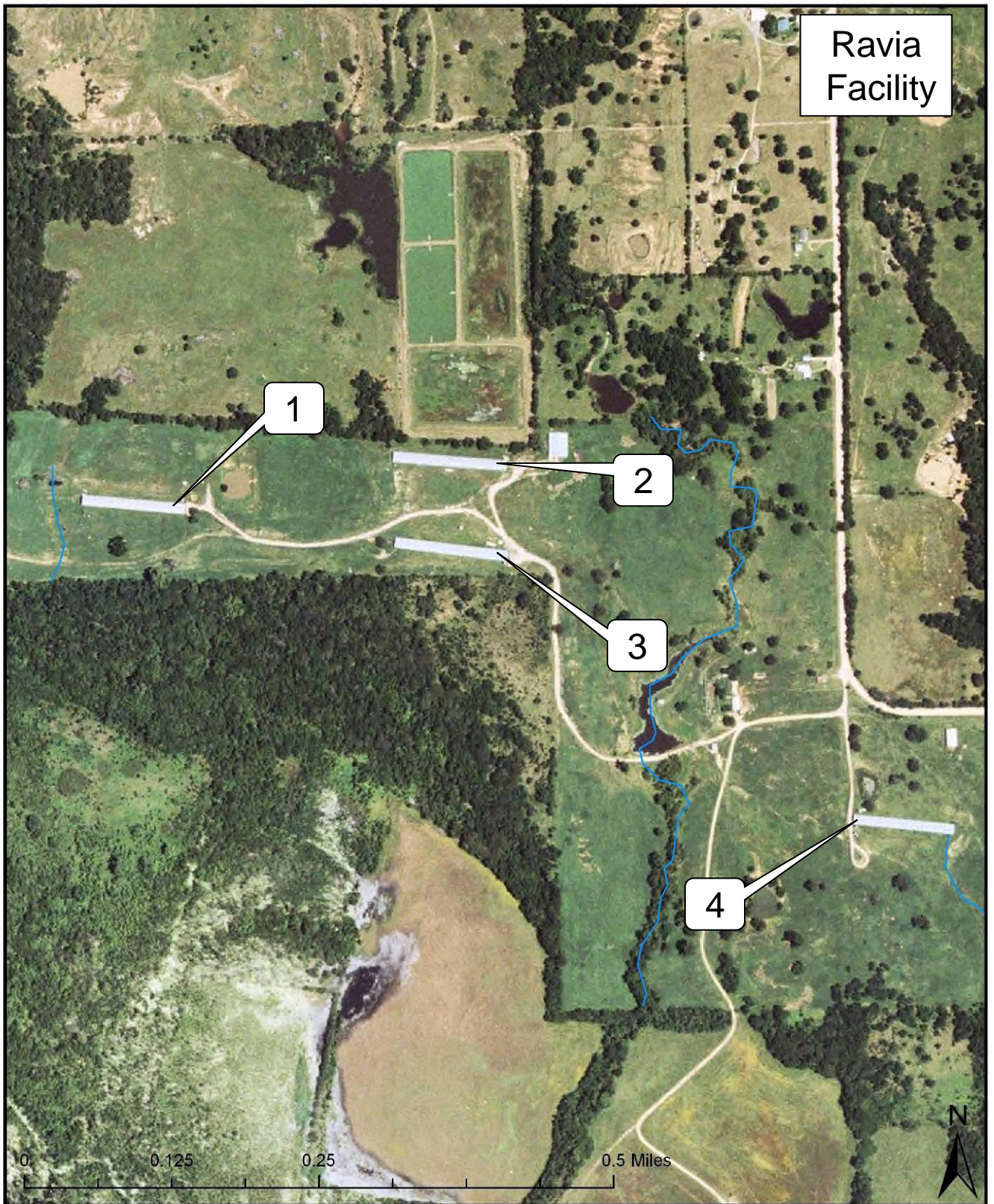
# Granite Ranch Facility



EPA Region 6  
Water Resources Section

## Granite Ranch Inactive Poultry Houses (numbered)





# Ravia Inactive Poultry Houses (numbered)

EPA Region 6  
Water Resources Section





## **APPENDIX B-1: LAGOON REMOVAL AND FACILITY CLOSURE REQUIREMENTS**

### **I. LAGOON REMOVAL AND CLOSURES AT THE PROSPER, SPRINGHILL, AND BOOGIE HILL FACILITIES**

A. As to the two existing manure lagoons at the Springhill facility; Mahard shall, no later than 6 months after entry of this Consent Decree, begin removing the water, Waste, bio-solids, any synthetic or biomat liner, and contaminated soils from the lagoons. No later than 15 months after entry, Mahard shall have completed the requirements set forth in Paragraphs 1 through 7 below. Mahard shall ensure adequate freeboard at each lagoon at all times to prevent any discharge.

B. As to the three existing wastewater lagoons located north of the former layer barns and one manure lagoon located at the south end of the Prosper facility, south of former pullet barns 5 and 6, adjacent to Gee Rd., Mahard shall, no later than 12 months after entry of this Consent Decree (which time may be extended by the United States and the State of Texas following a written request by Mahard setting forth the basis for such an extension), complete the requirements set forth in Paragraphs 1 through 7, below.

1. Mahard shall remove all water, Waste, bio-solids, any synthetic or biomat liner, and all contaminated soils from the existing lagoons and (i) dispose of such materials off-site at a licensed landfill, or (ii) land-apply liquids on-site or off-site, and in either case, at agronomic rates, in compliance with the requirements of Appendix C of this Consent Decree and all applicable state and federal laws and regulations.

2. If Waste or other lagoon contents are disposed of off-site, Mahard shall report to EPA and TCEQ: the location, date, and name of all Waste recipients, as well as the number of tons provided and the number of acres allocated by the recipient for application. Mahard shall provide Waste nutrient sampling results, obtained at the time of removal, to the Waste recipient as well as to EPA and TCEQ prior to conveyance off-site.

3. Mahard shall flush all pipes conveying Waste from the barns to the lagoons with fresh water, cap these lines at each opening such that flow through the line to the lagoon is effectively blocked. Mahard shall remove all liquids, Waste, solids, sludge, associated appurtenances and conveyance structures, and all contaminated soils from the lagoons.

4. For all inactive poultry houses, Mahard shall flush the incoming water lines completely with water, remove the pump and aboveground lines, and cap all underground lines. All lines, tanks, and reservoirs inside the barn shall be drained and removed.

5. Prior to backfilling and regrading, Mahard shall remove all contaminated soils from the lagoon floors until soil samples reveal contaminant concentrations below the following thresholds:

Nitrate as Nitrogen: 100 parts-per-million (ppm)

Ammonium as Nitrogen:	100 ppm
Phosphorus:	300 ppm
Arsenic:	20 parts-per-billion

All soil samples obtained to demonstrate contaminant levels must be obtained using a grid sampling method approved in advance by EPA and TCEQ, consistent with TCEQ Regulatory Guidance RG-408 (July 2009). Mahard shall provide EPA and TCEQ at least three (3) Days notice prior to any such sampling event and an opportunity to split samples. If soil sampling results indicate soil contaminant concentrations greater than the concentrations above, or if EPA or TCEQ determines that there is an indication of a discharge or seep from the lagoon floor or sidewalls, Mahard shall conduct additional sediment removal and sampling until all contaminated soils and sediments have been removed. However, if the presence of rock makes the further requested soil excavation infeasible, Mahard shall provide notice to EPA and TCEQ and request relief from the requirements of this Paragraph. If EPA or TCEQ disagrees that further excavation is infeasible, Mahard shall either timely resume excavation or submit the matter for Dispute Resolution under Section IX of this Consent Decree (Dispute Resolution).

6. Mahard shall provide all results of grid soil sampling to EPA and TCEQ within fifteen (15) Days of receipt of either preliminary or final laboratory analytical data, whichever is received earlier.

7. After removing the liquid, Waste, solids, sludge, associated appurtenances and conveyance structures, and all contaminated soils from the lagoons, and after receiving approval to commence backfilling from EPA and TCEQ, Mahard shall backfill each lagoon by pushing the side berms in, adding additional clean fill as needed, and compacting to the original density. Mahard shall return the site as closely as possible to the approximate original topography without changing the surface hydrologic regime.

8. Following completion of requirements in Paragraphs 1-7 of this Appendix B-1, above, Mahard shall sprig the surface of the closed lagoon with Bermuda grass or equivalent, and maintain the integrity of final vegetative cover on all disturbed areas for a period of at least five years.

9. Following all closure activities, including ground water monitoring as set forth in Section III, below, Mahard shall submit a Post-Closure Report to EPA and TCEQ, signed and certified by a Mahard official in accordance with Paragraph 25 of this Consent Decree and by a Professional Engineer registered in the appropriate State. This Report shall contain details of post-closure performance, including the integrity and effectiveness of the final vegetative cover, the effects of settling and erosion, information about run-on and run-off measures employed to prevent damage to the cover, ground water maintenance and monitoring activities, and a certification that the lagoon was properly closed in accordance with the approved closure plan or these provisions.

10. At the Springhill Facility, until the closure of all lagoons is complete, Mahard shall ensure, through the installation of fencing or otherwise, that no cattle have access to the lagoons.

## **II. CLOSURE OF THE GRANITE RANCH FACILITY**

To complete final closure of the Granite Ranch Facility, Mahard shall

11. No later than 180 days after entry of this Consent Decree, remove all Waste from the six inactive poultry houses identified in Appendix A-3 and dispose of it off-site at a licensed landfill, or land apply it on-site or off-site and, in either case, at agronomic rates and in compliance with the requirements of Appendix C of this Consent Decree and all applicable state and federal laws and regulations. If Waste or other materials from the inactive houses is disposed of off-site, Mahard shall report to EPA and the appropriate State: the location, date, and name of all Waste recipients, as well as the number of tons, provided and the number of acres allocated by the recipient for application, and, if known to Mahard, the crop to which the Waste or other materials will be applied. Mahard shall provide Waste nutrient sampling results, obtained at the time of removal, to the Waste recipient as well as to EPA and the appropriate State in the next semi-annual report, submitted pursuant to Section VI (Reporting Requirements) of this Consent Decree.

12. No later than 180 days after entry of this Consent Decree, decommission all poultry houses on-site at the Granite Ranch Facility and properly dispose of buildings.

13. No later than thirty (30) days after the Effective Date of this Consent Decree, submit to EPA and the State of Oklahoma documentation confirming whether or not there are users of shallow groundwater (i.e., surficial aquifers) within ½ mile down-gradient of the Granite Ranch facility property boundary. Such documentation shall be certified in accordance with Paragraph 25 of this Decree.

14. Perform semi-annual ground water monitoring, as specified in this Appendix B-1, for no fewer than three years following the Effective Date of this Decree or until at least two consecutive sampling results demonstrate that each of the tested parameters are below the thresholds identified in Paragraph 24, below, whichever is sooner. If, after three years after the Effective Date of this Decree, the sampling results are still not below the thresholds in Paragraph 24, Mahard may submit a request to discontinue further sampling to EPA and the State of Oklahoma. After review of this submittal, if EPA and the State determine that further groundwater monitoring is not required, EPA or the State shall so notify Defendant within 180 days of receipt of Defendant's request.

15. Comply with the restrictions on grazing that apply at LMU #2, as defined in Appendix C.

16. Within six months of the completion of ground water monitoring at the Granite Ranch Facility, Mahard shall plug and abandon all ground water monitoring wells in accordance with all applicable state laws and regulations including, but not limited to, Oklahoma Water Resources Board Rule 785:25-11-2.

**III. GROUND WATER MONITORING FOLLOWING LAGOON CLOSURES AT PROSPER AND SPRINGHILL**

17. No later than thirty (30) Days after entry of this Consent Decree, Mahard shall submit a Recharge Feature Certification and proposed ground water monitoring plan for Springhill and Prosper (relating only to the Prosper southern lagoon adjacent to Gee Rd.) to EPA and Texas for review and approval. No later than thirty (30) Days after Mahard's receipt of approval of the Recharge Feature Certification and ground water monitoring plan, Mahard shall install ground water monitoring wells as directed by the plan and commence monitoring in compliance with the plan and this Section III of Appendix B-1.

18. Mahard shall install one monitoring well up-gradient and two monitoring wells down-gradient of the lagoon(s), at locations approved by EPA and TCEQ. Mahard shall determine gradient by direct push technology (DPT) or another approved method prior to well installation. At each facility, Mahard shall provide EPA and TCEQ with a minimum of three (3) business days advance notification of any field activities, such as site location for DPT, well installation, completion, or development, aquifer testing, and sampling.

19. Mahard shall perform quarterly monitoring for at least 3 years following the installation of the wells and initial sampling (i.e., at least 13 sampling events). Following this three-year sampling period, Mahard shall perform additional sampling only if the final results in the third year fail to show four consecutive "clean" sampling events (i.e., below the thresholds specified below). If additional sampling is required, Mahard shall perform such additional quarterly sampling until four consecutive clean sampling events occur.

20. Notwithstanding the requirements of the preceding Paragraph, if the tested parameters in samples obtained from the upgradient well show levels in excess of the thresholds identified in Paragraph 24, Mahard may request appropriate relief from EPA and TCEQ from the requirements of Paragraph 19. Upon such request, EPA and TCEQ will evaluate whether the upgradient levels may have been affected by other Mahard activities and make a determination as to what relief is appropriate, including, but not limited to, revising the threshold levels in Paragraph 24, requiring the installation of an additional upgradient well in a new location, or other appropriate relief.

21. If the hydraulic conductivity analyses suggest that quarterly monitoring will not generate individual and representative ground water samples, EPA or the appropriate State may adjust the sampling frequency or duration.

22. If any of the ground water samples are greater than the threshold values for one or more of the parameters indicated in Paragraph 24 of this Appendix B-1, EPA or TCEQ may require Mahard to submit a plan for further investigation and remediation.

23. All ground water lab analyses shall provide results for phosphorus, ammonium, chloride, nitrates, electrical conductivity, fecal coliform (total enumeration), arsenic and pH. Hydraulic conductivity shall be determined via slug test or pump test following proper installation, completion and development of each well. If after two quarterly samples, Arsenic is below 10 ppb, analysis for arsenic may be discontinued, and closure will be based upon the remaining parameters.

24. The specified thresholds are for the following three parameters only, and are as follows:

Nitrate as Nitrogen:	10 ppm
Ammonium:	10 ppm
Arsenic:	10 ppb

25. Prior to sampling each well, static fluid levels shall be measured and field parameters shall be collected for pH, temperature, and dissolved oxygen.

26. Mahard shall provide all ground water monitoring data collected at these facilities to EPA and the appropriate State within fifteen (15) Days of receipt of either preliminary or final laboratory analytical data, whichever is received earlier.

27. Within six months of the completion of ground water monitoring at each Facility, Mahard shall plug and abandon all ground water monitoring wells in accordance with all applicable state laws and regulations including, but not limited to 16 T.A.C. § 76.1004.

#### **IV. SOURCE REMOVAL AT INACTIVE POULTRY HOUSES**

28. No later than sixty (60) Days after the Effective Date of this Consent Decree, Mahard shall remove as much Waste as practicable from the following inactive poultry houses (identified on maps in Appendix A-3) and dispose of it off-site at a licensed landfill, or land apply it on-site or off-site and, in either case, at agronomic rates and in compliance with the requirements of Appendix C of this Consent Decree and all applicable state and federal laws and regulations:

- a. Houses numbered 1-5 on the Springhill Facility Map;
- b. Houses numbered 1-4 on the Ravia Facility Map; and
- c. Houses numbered 1-5 on the Boogie Hill Facility Map.

29. If Waste or other materials from the inactive houses is disposed of off-site, Mahard shall report to EPA and the appropriate State: the location, date, and name of all Waste

recipients, as well as the number of tons, provided and the number of acres allocated by the recipient for application, and, if known to Mahard, the crop to which the Waste or other materials will be applied. Mahard shall provide Waste nutrient sampling results, obtained at the time of removal, to the Waste recipient as well as to EPA and the appropriate State in the next semi-annual report, submitted pursuant to Section VI (Reporting Requirements) of this Consent Decree.

**V. VEGETATIVE FILTER STRIP AT NEBO RANCH FACILITY**

30. No later than thirty (30) days after the Effective Date of the Consent Decree, Mahard shall submit to EPA and ODAFF a detailed plan for construction of an expanded vegetative filter strip (“VFS”), located as identified on the map attached as Appendix B-2. Construction of the VFS shall be complete no later than ninety (90) days after Mahard’s receipt of plan approval from ODAFF or EPA.

31. A new grassed waterway will be constructed from the south WRS to the natural waterway located southwest of the facility. This waterway will serve as a drainage conveyance for stormwater off the field and provide an additional volume of soil to cover the rock in the structures. The former RCS structures will become integrated into the grassed waterway by land forming these areas, covering the rock with a soil blanket, and establishing permanent vegetation. Mahard shall design and construct the grassed waterway in accordance with NRCS Practice Code 412 (Grassed Waterway).

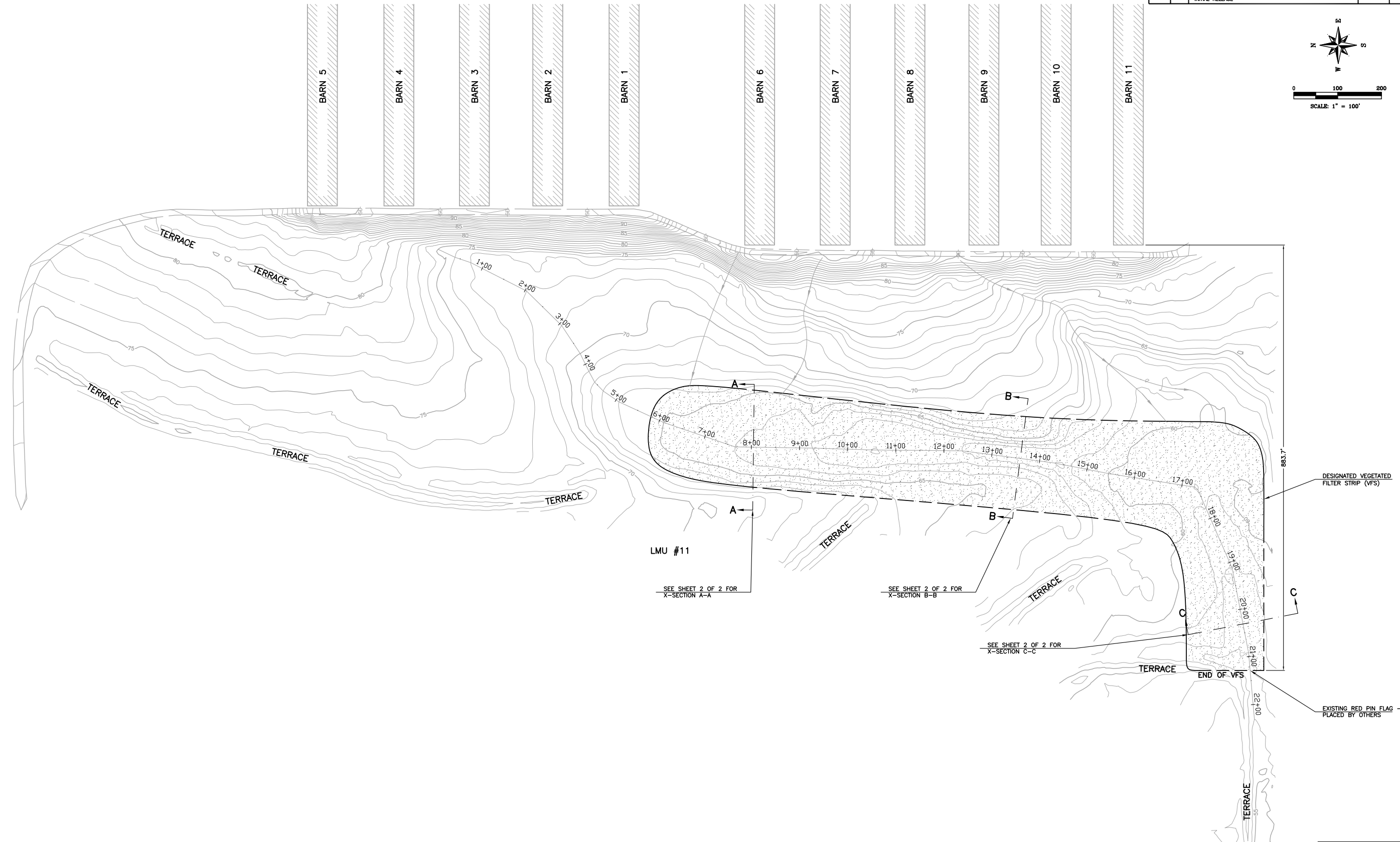
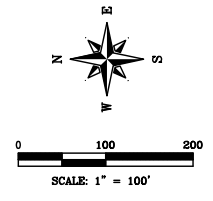
32. The VFS and Grassed Waterway will be constructed in the manner described in the Engineered Vegetative Filter Strip for the Control of Nutrient Laden Stormwater Runoff (Revised Nov. 22, 2010), the VFS schematics (both attached as Appendix B-2), and the plan approved by EPA and ODAFF following entry of this Decree.

**Appendix B-2 to Consent Decree in:**  
***United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.***

- 1) Nebo Ranch Vegetative Filter Strip Maps
- 2) Engineered Vegetative Filter Strip for the Control of Nutrient Laden Stormwater Runoff  
(Revised Nov. 22, 2010)

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REVISIONS				
ZONE	REV	DESCRIPTION	DATE	APPROVED
-	-	INITIAL RELEASE		



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PROJECT:  
**MAHARD DRAKE**  
 EGG RANCH  
 DRAKE, MURRAY COUNTY, OKLAHOMA



**ENVIRO-AG ENGINEERING, INC.**  
 ENGINEERING CONSULTANTS

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SHEET DESCRIPTION:  
 SITE PLAN FOR  
 VEGETATED FILTER STRIP AREA

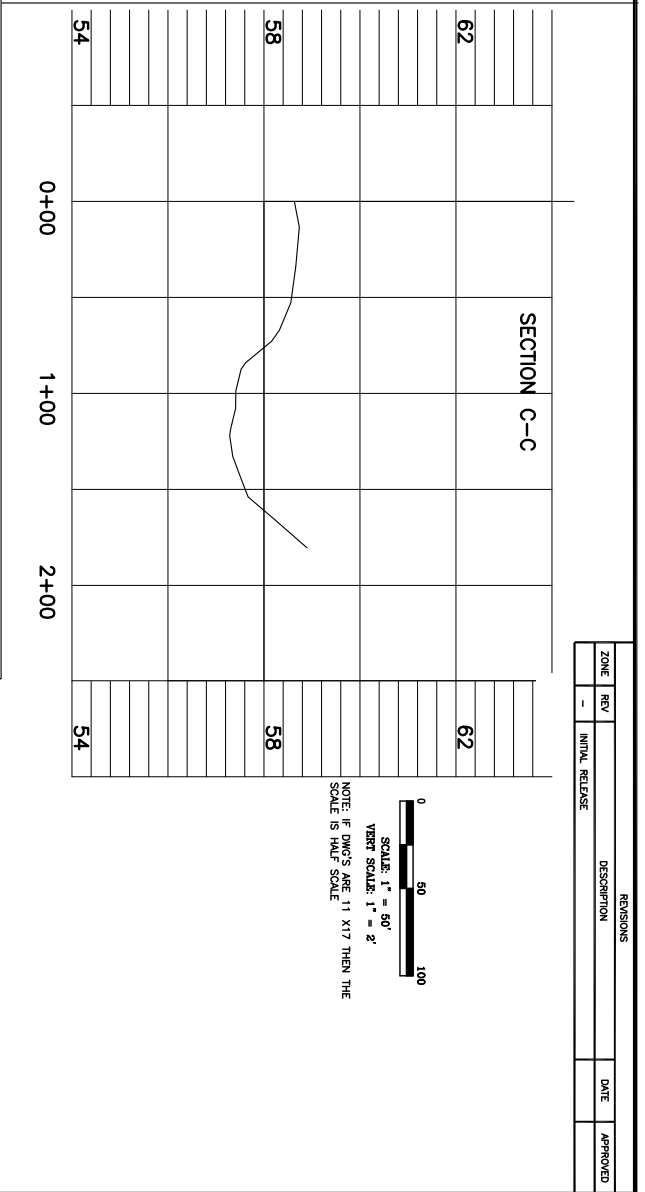
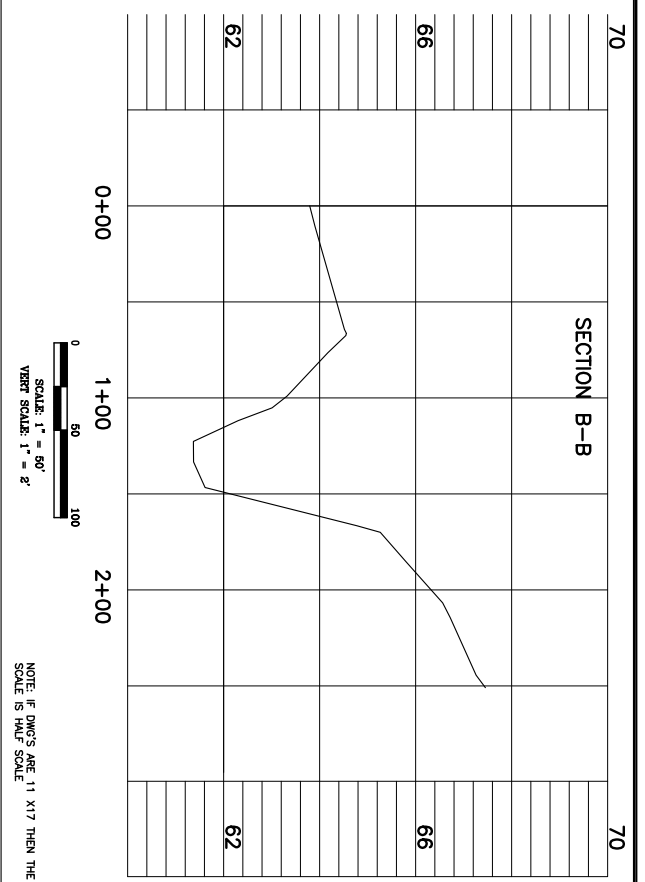
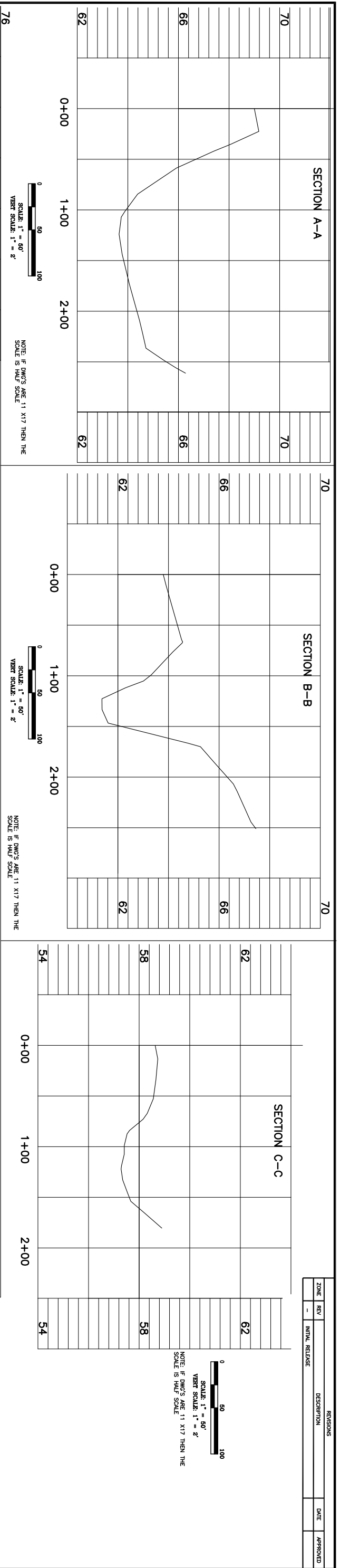
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 PROFILE SCALE:  
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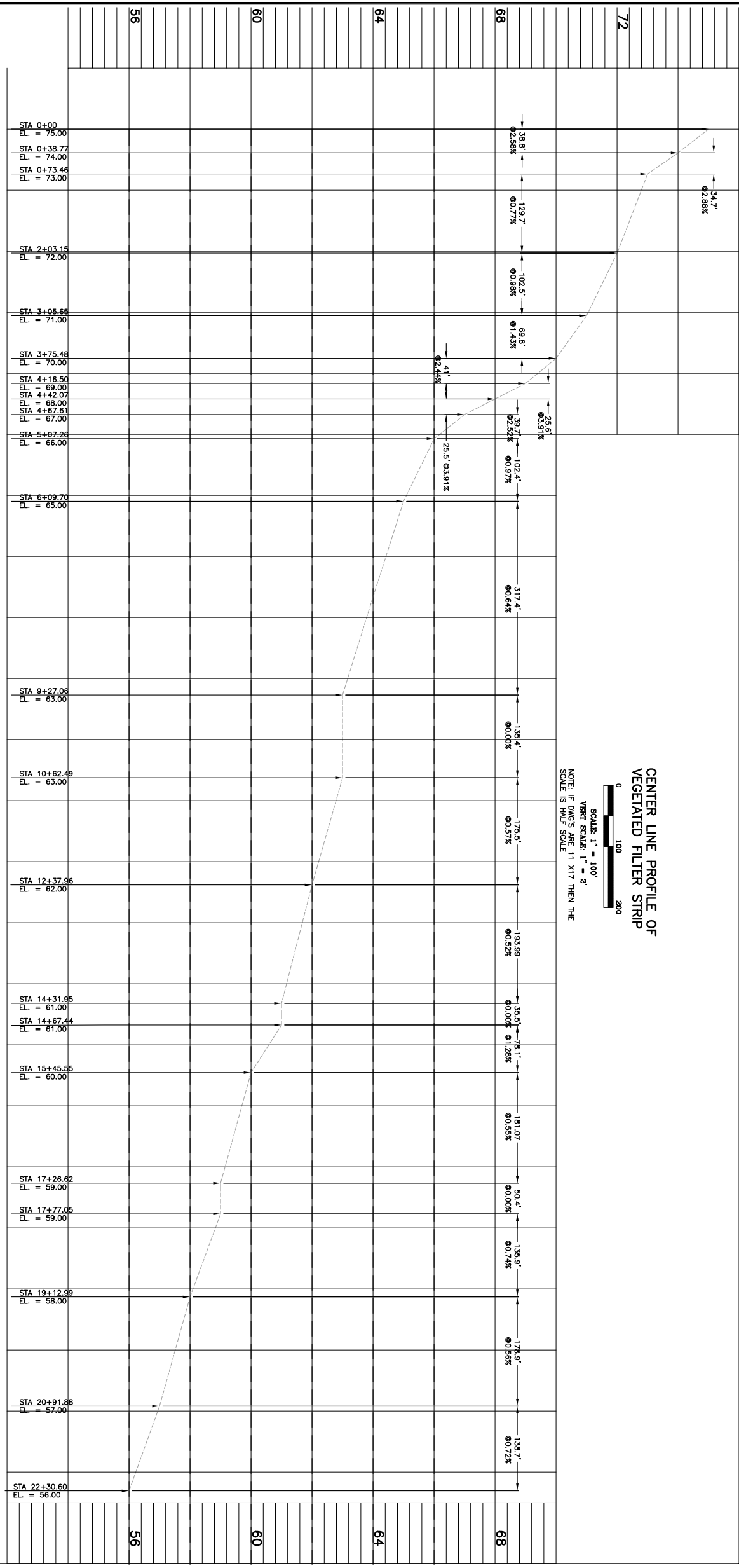
REV

MAHARD EGG  
 SITE PLAN FOR VFS  
 DWG





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**SHEET DESCRIPTION:** X-SECTION AND PROFILE FOR VEGETATED FILTER STRIP AREA

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HORIZONTAL SCALE: 1" = 100'  
VERTICAL SCALE: 1" = 2'

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REV	DESCRIPTION

DWG SIZE: D SHEET 2 OF 2

MAHARD EGG  
SITE PLAN FOR VFS

# **Engineered Vegetative Filter Strip For The Control of Nutrient-Laden Stormwater Runoff**

*Prepared for:*

**Mahard Egg Farm, Inc.  
Nebo, Murray County, Oklahoma Facility  
7859 HWY 177 South  
Sulphur, OK 73086**

Revised November 22, 2010



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Murray County, Oklahoma

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## **BACKGROUND**

The existing egg laying facility consists of eleven (11) confinement buildings and an egg washing/processing facility. Wastewater generated by the egg washing/processing facility is contained in a permitted, synthetically lined WRS located south and east of the confinement barns. Stormwater falling on and between the production barns flows to the west and beneath the west perimeter road through culverts and through an area of closed WRSs. The drainage area between each barn has a slope greater than 1%.

The confinement barns are constructed as high-rise, tunnel-ventilated barns utilizing cool cells to reduce the heat load inside the barns. Manure produced by the hens falls beneath the laying area and is stored in the barn for up to one year before removal. Feed is delivered via a continuous wire auger which does not produce any visible emissions. As a result of animal cooling, particulate emissions from the exhaust fans comprising primarily of small feather particles may have the potential to impact stormwater from the areas between, and adjacent to, the confinement buildings. On October 12, 2009, the ODAFF has sampled areas of standing stormwater between the barns which exhibit elevated nutrient and electrical conductivity levels. The elevated levels observed between Barns 1 and 2 indicated a nitrate-nitrogen level of 242 ppm. Although easily sampled, the small volume of standing water between the barns should not be deemed representative of the nutrient load of the stormwater discharged from this facility. Subsequent sampling of this same area on May 17, 2010 indicated a nitrate-nitrogen level of <1 ppm.

During a site inspection conducted on June 24, 2010, no evidence of manure or process wastewater from the cool pads was observed discharging from any of the production units. However, it was observed that significant feral hog activity (manure disposition and/or hog wallows in the standing water areas) was present between all buildings. This fact alone would create suspect stormwater quality issues especially with residual standing water from past rainfall events. The hog activity may be a result of any spilled feed around the feed system. A review of the sampling data between Barns 1 and 2 indicate the nutrient loading exhibiting that of spilled animal feed.

### **Structural Modifications**

The areas between the barns has been re-graded to eliminate/minimize standing water which would discourage feral hog activity and reduce skewed sample test results.

### **VEGETATED FILTER STRIPS**

A Vegetated Filter Strip (VFS) is a zone of vegetation through which sediment and nutrient-laden flow is directed before being discharged to a concentrated flow channel. There are two classifications of VFS: constructed filter strips and natural vegetative filter strips (NVFS). This facility proposes to utilize constructed perennial bermudagrass as VFS. VFSs remove solids primarily by three mechanisms: (1) deposition of bedload material and its attached chemicals as a result of decreased velocities and transport capacity; (2) trapping of suspended solids in the litter collected at the surface; and (3) trapping of suspended material that moves into the soil matrix along with infiltrating water (Haan, et al.). There are several factors that affect VFS efficiency:

- Flow rate – sediment trapping is inversely related to flow rate.
- Size distribution – larger particles are more easily trapped (sand).  
Clay size particles are trapped only by infiltration that occurs on long, relatively flat slopes.
- Slope – trapping is inversely related to slope.
- Type of vegetation – vegetation that grows in clumps tends to be less effective than uniform growth.
- Density of vegetation – trapping directly related to vegetation density.
- Stiffness of vegetation – trapping related to stiffness and height.  
Vegetation should ideally remain erect under flow conditions.
- Height of vegetation – trapping generally increases with height, until a point is reached where the vegetation lays over during flows or becomes reduced near the soil surface.
- Infiltration rate – trapping of suspended sediment, particularly colloidal and small silt particles is directly proportional to infiltration rate.
- Mass of litter – The depth of surface litter is directly related to the amount of sediment that can be trapped.
- Degree of channelization – trapping is inversely related to the degree to which flow is channelized. Channelized flow is deeper with higher velocities than overland flow, resulting in higher transport capacities and reduced trapping efficiencies.

Work performed by researchers has demonstrated that VFS are effective in reducing sediments and associated impacts on water quality. Parsons, et al. utilized crab grass and bermudagrass VFS to control runoff from croplands where a 70% trapping efficiency was measured (reductions of 50% ortho-P, 26% total P and 50% total N). Dillaha et al., controlled feedlot runoff with nine constructed VFSs with length of 4.6 m (15 feet) to 9.1 m (30 feet) on slopes from 5 to 15 %. The sediment trapping efficiency was measured from 81% to 91%, with 50 to 69% of total P and 60 to 74% total N captured.

#### **EFFECTIVENESS OF VFS AT NEBO**

The coastal bermudagrass VFS to be planted between the production barns in addition to the areas below the production site in the areas of the closed WRSs will possess most of the desirable characteristics of constructed filter strip:

- Slope – average slope of the VFS is 1.6%
- Vegetation – dense bermudagrass during warm season and ryegrass as a cool season cover crop
- Soils – possess moderate infiltration rates
- Area – 47 acres (acreage includes the area of the 300 ft. long vegetative filter strip)
- Length of overland flow – The direction of the flow is determined which designates the buffer zone. (Refer to attached topographic site map).

The NRCS provides recommendations for construction of filter strips in Conservation Practice Standard 393. It recommends that overland flow entering the filter strip be sheet flow. At the facility, flow enters the VFS as sheet flow as depicted by the topographic survey. The NRCS recommends the VFS remain permanent herbaceous vegetation. Noxious weeds should be controlled, especially state-listed noxious weeds to prevent short-circuiting and channelizing flow. The NRCS also recommends a minimum flow length of 30 feet to reduce sediment,

particulate organics and sediment adsorbed contaminants in runoff. The approximate conservative treatment length is 300 feet. NRCS further recommends that the minimum ratio of the drainage area to filter area be 50:1. The ratio of drainage area to filter area at the facility is approximately 3.5:1. The soils in the VFS possess a moderate infiltration rate, which is also desirable.

Murphy and Bogovich recommend a 15-minute flow time at a depth of 0.5 inches for runoff from animal concentration areas through vegetated filters. The sheet flow equation used to calculate the flow time is:

$$T_t = 0.007(nL)^{0.8} / (P2)^{0.5} S^{0.4}$$

Where:  $T_t$  = travel time (hr)  
 $n$  = Mannings roughness coefficient (0.43 for grass)  
 $L$  = flow length (ft)  
 $P2$  = 2 year, 24 hour rainfall (3.9 inches)  
 $S$  = slope of hydraulic grade line (land slope, ft/ft)

The 2 year, 24 hour rainfall event for Murray County is 3.9 inches. For a minimum flow length of 300 feet and slope of 0.016 ft/ft the travel time is calculated to be 0.9 hours (54 minutes). This demonstrates that the naturally occurring slopes and length of flow provide a flow time greater than the recommended minimum for constructed VFS. Additionally, Mahard plans on utilizing an existing grassed waterway to convey the stormwater from this area to the west which will also provide filtering and settling capability that is not included in this calculation.

#### **OPERATION AND MANAGEMENT OF THE VFS**

To continue to provide effectiveness as a VFS, the improved pasture areas will be managed as follows:

- The vegetation will be established in the spring of 2011 in coastal bermudagrass and remain in a permanent cover of coastal bermudagrass for the duration of the operation.
- The bermudagrass will be over-seeded with ryegrass, a cool season grass during the winter months to promote nutrient uptake and stem density cover during the cool season months. The VFS is considered established in permanent cover when 90% cover has been achieved.
- The vegetation will be harvested as hay to remove nutrients taken up by the plants. Care will be taken to leave at least three inches of grass after each cutting to provide continued filtering. Care will be taken to harvest when soils are not saturated to prevent rutting by the harvesting equipment.
- Noxious weeds will be controlled.
- Aerate the bermudagrass outside the production barns to promote new growth and high stem density.
- The VFS will be inspected after storm events and erosional cuts that have formed will be repaired. Unevenly deposited sediment accumulation that will disrupt sheet flow will be removed. Disturbed areas will be reseeded and other measures to prevent concentrated flow through the VFS will be taken.
- When needed, supplemental nutrients will be applied to maintain the vegetation stand density.
- Grazing is not allowed in the VFS area.

- Manure solids (litter) will not be applied to the VFS.
- Wastewater will not be applied to the VFS
- NRCS does not require sampling as part of the Operations and Maintenance of the VFS and based on the nutrient concentration load at Nebo, the VFS constructed and proposed cover crop, will provide sufficient protection to surface waters.

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**APPENDIX B-3: APPROVED LAGOON CLOSURE PLAN FOR BOOGIE HILL**

33. Boogie Hill Facility. No later than one year after entry of this Decree, Mahard shall complete the closure of the three manure lagoons located in the northwest portion of the Boogie Hill Facility in accordance with the terms of the attached closure plan approval letter.

34. In compliance with the Nutrient Management Plan for Boogie Hill dated August 11, 2010, Mahard shall not land apply any Waste, Wastewater, or Sludge to LMU BHW-1, as part of the lagoon closure process or otherwise.

**Appendix B-3 to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

Approved Lagoon Closure Plan for Boogie Hill Facility



State of Oklahoma  
Department of Agriculture, Food, and Forestry

Mary Fallin  
Governor

Jim Reese  
Secretary of Agriculture

March 28, 2011

Mr. Norman Mullin, P.E.  
Enviro-Ag Engineering  
3404 Airway Blvd.  
Amarillo, TX 79118

RE: Final Approval AWRS Closure Plan for the Mahard Boogie Hill Facility

Dear Mr. Mullin:

Pursuant to our prior correspondence, this letter encapsulates the final AWRS Closure Plan for the three manure lagoons located in the northwest portion of the Mahard Egg Farm ("Mahard") Boogie Hill Facility, as approved by the Oklahoma Department of Agriculture, Food, and Forestry ("ODAFF" or "Department") by letter from ODAFF to you dated August 18, 2010.

This letter is intended to provide a clear statement of the AWRS closure requirements approved by ODAFF at this Facility for the benefit of Mahard, ODAFF, and EPA, in the event a federal Consent Decree is entered by the Northern District of Texas addressing these lagoon closures (herein referred as a "Consent Decree"). Prior to issuance of this letter, Mahard, ODAFF, and EPA have conferred on these points and intend that, if a Consent Decree is entered, this letter will be attached thereto, and thereby incorporated into, any such Consent Decree, and enforceable there under. In such case, this letter supercedes all prior correspondence between Mahard Egg Farm (including its consultants and representatives) and ODAFF on this issue.

No later than one year after entry of the Consent Decree, Mahard shall complete the closure of the three manure lagoons in the northwest portion of the Boogie Hill Facility by completing items numbered 1 and 3 through 9, below. The groundwater monitoring, described in Item number 2, will proceed on the schedule described therein.

Mr. Norman Mullin, P.E.

March 28, 2011

Page Two

1. Mahard shall sample and perform lab analysis of samples from the WRS bottoms (floors) to determine if contaminated soil needs to be removed. If soil sampling from the WRS bottoms indicate soil contamination concentration higher than the levels specified below, Mahard shall remove additional contaminated soil and perform additional sampling until all contaminated soil has been removed.

Nitrate as Nitrogen	100 ppm
Ammonium as Nitrogen	100 ppm
Phosphorous	300 ppm

If Mahard determines that contaminated soil cannot be removed from the lagoon floors due to rocks, then Mahard shall notify ODAFF pursuant to the Notice Requirements of Section XIV of the Consent Decree. The Department will then make arrangements to further jointly investigate these areas with Mahard representatives.

2. Mahard shall install at least three (3) monitoring wells at Boogie Hill, one (1) up-gradient and two (2) down-gradient of the closed lagoon(s), at locations approved by the Department and EPA. These three (3) monitoring wells' installation shall be completed within sixty (60) days of the Department's determined culmination date of the WRS closures. Mahard shall determine the groundwater gradient by direct push technology or another approved method prior to well installation. At each facility, Mahard shall provide the Department and EPA with a minimum of 72 hours advance notification prior to any field activities, such as gradient determination, well installation, completion or development, aquifer testing, and sampling. Mahard shall perform quarterly monitoring for at least three (3) years following the installation of the wells and initial sampling (i.e., at least 13 sampling events). Following this three-year sampling period, Mahard shall perform additional sampling only if the final results in the third year fail to show four consecutive "clean" sampling events (i.e. below the thresholds specified below).

Nitrate-nitrogen	10 ppm
Ammonium nitrogen	10 ppm

If additional sampling is required, Mahard shall perform such additional quarterly sampling until four consecutive clean sampling events occur. If the hydraulic conductivity analyses suggest that quarterly monitoring will not generate individual and representative groundwater samples, the Department or EPA may adjust the sampling frequency or duration. If any of the groundwater samples are greater than the threshold values listed above, the Department or EPA may

require Mahard to submit a plan for further investigation and remediation. All groundwater laboratory analyses shall provide results for nitrate-nitrogen, ammonium nitrogen, phosphorous, chloride, electrical conductivity, fecal coliform, and pH.

Mahard shall determine hydraulic conductivity via slug test or pump test following proper installation, completion and development of each well. Prior to sampling each well, Mahard shall measure static fluid levels to a predetermined point on the casing. Mahard shall purge groundwater from each well until field measurements indicate stable values for pH, temperature and electrical conductivity. Mahard shall provide all groundwater monitoring data collected at these facilities to the Department and EPA within 15 days of receipt of either preliminary or final laboratory analytical data, whichever is received earlier. With six (6) months of the completion of ground water monitoring at each facility, Mahard shall plug and abandon all groundwater monitoring wells in accordance with all applicable state laws and regulations including, but not limited to, Oklahoma Water Resources Board Rule 785:35-11-2.

3. As to all sludge from the bottoms of the WRSs that is taken off-site, Mahard shall provide the following information regarding the sludge recipients: name, mailing address, phone number, county, legal locations of application site(s), current soil sample laboratory results or each land application location, number of tons provided, number of acres utilized for land application, application rates and type of crops/pastures.
4. Mahard shall push in the WRS berms, compact to original density with the material present in the WRS area while maintaining the surface hydrologic regime (no ponding) in that area. No original topographic data is available so an original comparison cannot be made as to what the land shape was prior to construction of the facility. Mahard does not plan on importing fill (borrow) material for the closure of these WRSs. Mahard will land form this area to the degree necessary to meet the objective stated above.
5. Mahard shall not stage any sludge, waste, or lagoon contents on-site, except during AWRS (lagoon) closure activities.
6. Mahard shall maintain common grass planted on BHSW-1 (LMU #2) and BHE-1 (LMU #3), as shown on the NMP submitted to ODAFF on August 12, 2010, and shall graze these LMUs at no more than 1 AU/5 ac.

Mr. Norman Mullin, P.E.  
March 28, 2011  
Page Four

7. Mahard shall sample and re-analyze the mixed sludge upon removal to determine nutrient concentrations, calculate the land application rates of the sludge/effluent, and provide these results to the Department, EPA, and sludge recipients.
8. Mahard shall provide ODAFF with LMU maps of fields that include buffers around sensitive environmental resources (i.e. streams, ponds, rivers, creeks, wetlands, and other structures).
9. The EPA NMP for the Boogie Hill Facility that was submitted to the Department on August 11, 2010 is approved, subject to the requirement that Mahard shall not land-apply litter, sludge, manure, or other waste to BHW-1.

Respectfully,



D. J. Parrish, Director  
Agricultural Environmental  
Management Services

Enclosure

c: Mahard Egg Farms, Inc.  
Teena Gunter, OGC  
Clayton Eubanks, Assistant Attorney General  
Nicole Veilleux, DOJ  
Ellen Chang-Vaughn, EPA

**APPENDIX C:**  
**NUTRIENT MANAGEMENT PLANS, LAND APPLICATION, GRAZING**  
**AND LAND MANAGEMENT**

**I. NUTRIENT MANAGEMENT PLANS**

35. No later than thirty (30) Days after the Effective Date of this Decree, for each Facility identified in Appendix A-1, and annually thereafter, Mahard shall submit to EPA and the appropriate State for approval:

- a. a proposed Nutrient Management Plan for any fields or Land Management Units to which Mahard proposes to land-apply Sludge, Waste, or Wastewater at any time in the next twelve months, or
- b. a statement, signed and certified by a Mahard official in accordance with Paragraph 25 of this Consent Decree, that Mahard will not land apply any Sludge, Waste or Wastewater anywhere at that Facility.

36. EPA or the appropriate State shall, within ninety (90) Days, provide a statement of their approval or an explanation of the changes necessary to secure approval, and Mahard shall resubmit a revised NMP within thirty (30) Days of receipt of such explanation.

37. Each NMP submitted shall be consistent with the state-specific NRCS Code 590 and provide an estimate, for each field, of the Phosphorus Index and application rates of any supplemental nitrogen.

38. No NMP submitted by Mahard under this Decree shall be inconsistent with the terms of this Appendix C or with any NMP submitted by Mahard to the Texas State Soil and Water Conservation Board for the subject Facility or developed by the Texas State Soil and Water Conservation Board for Mahard for the subject Facility.

**II. LAND APPLICATION OF WASTE, WASTEWATER, OR SLUDGE**

39. Except as provided in this Section II of Appendix C, and until the Consent Decree is terminated in full or in relevant part in accordance with Section XVII (Termination) of this Consent Decree, Mahard shall not land apply Waste, Wastewater or Sludge on any fields designated with an LMU number on the maps in Appendix A-2 at Vernon-Chillicothe, Prosper, Springhill, Nebo Ranch, Granite Ranch, Boogie Hill, or Ravia.

40. Newly designated LMUs. As to land that is not identified as an LMU on the Appendix A-2 maps, such areas may be subject to land application, but only in accordance with an approved NMP and all applicable state and, for Oklahoma Facilities, federal requirements regarding land application.

41. Land Application of Lagoon Contents During Lagoon Closure Activities. As part of the closure of a lagoon pursuant to Appendices B-1 or B-3 of this Decree, Mahard may land apply lagoon contents (i.e., Sludge, Waste, Wastewater, lagoon water, or lagoon bottom soils) on-site at agronomic rates following the written approval by EPA and the appropriate State of a site-specific Nutrient Management Plan that meets applicable state and federal requirements. Prior to any land application conducted pursuant to this Paragraph, including off-site application, Mahard shall provide at least three (3) business days advance notice and the opportunity to observe the application and to split samples to both EPA and the appropriate State, in accordance with the notice provisions of this Section V of this Appendix C.

42. Land Application of Process Wastewater and Lagoon Waters as Part of Normal Operations. As part of normal operations at the Boogie Hill, Nebo Ranch, and Vernon-Chillicothe Facilities, Mahard may land apply Process Wastewater or, to ensure adequate freeboard, effluent or lagoon waters, in accordance with a site-specific Nutrient Management Plan approved by EPA and the applicable State.

43. Prior to any land application of Waste or Sludge conducted at any Mahard Facility, Mahard shall provide at least three (3) business days advance notice and the opportunity to observe the application and to split samples to both EPA and the appropriate State, in accordance with the Notice provisions of Section VI of this Appendix C.

### **III. GRAZING AND FORAGE MANAGEMENT**

44. This Consent Decree imposes no restrictions on the manner in which Mahard may graze cattle on any of its properties unless the land management unit (LMU) is designated on the maps in Appendix A-2 as “Restricted Grazing” or “No Grazing”, in which case the requirements set forth in Paragraphs 45 and 46 of this Appendix C, respectively, apply.

45. Restricted Grazing. On LMUs designated on the maps in Appendix A-2 as “Restricted Grazing,” Mahard may graze animals only in compliance with the Grazing Plan set forth in Appendix F. However, once (and for so long as) the soil test results obtained pursuant to Section V of this Appendix C from any such “Restricted Grazing” field fall below 200 ppm phosphorus (in Texas) or 400 pounds/acre Soil Test Phosphorus (STP) (in Oklahoma) (collectively referred to hereinafter “200 ppm/400 #/acre”), the requirements of the Grazing Plan set forth in Appendix F do not apply to such field and such grazing activities are not subject to this Consent Decree.

46. No Grazing. On LMUs designated on the maps in Appendix A-2 as “No Grazing,” Mahard shall not graze animals until (and for so long as) soil test results obtained from such fields pursuant to Section V of this Appendix C reflect phosphorus levels below 400 ppm (in Texas) or 800 pounds/acre (in Oklahoma), at which time any grazing must be conducted in compliance with the requirements of the Grazing Plan in Appendix F. As with the fields described in Paragraph 45 of this Appendix C, once (and for so long as) soil test results obtained pursuant to Section V of this Appendix C from any such “Restricted Grazing” field fall below



200 ppm/400 #/acre, the requirements of the Grazing Plan set forth in Appendix F do not apply to such field and such grazing activities are not subject to this Consent Decree.

47. Mahard shall maintain perennial vegetation (e.g., Bermuda grass, alfalfa, switchgrass, etc.) on all fields designated on the maps in Appendix A-2 as “No Grazing.” Mahard shall mechanically cut and remove such vegetation in a manner consistent with NRCS 511 (Forage Harvest Management), except in areas rendered inaccessible to such mechanical equipment due to rocky outcrops or other topographic features.

48. Mahard shall maintain a continuous vegetative crop, warm/cool-season mix (e.g., Bermuda grass with no-till winter wheat), on all fields designated on the maps in Appendix A-2 as “Restricted Grazing.” Grazing and forage management on these fields shall be consistent with the guidelines specified in Appendix F.

49. Mahard shall collect and analyze plant tissue samples annually, and during the growing season of each crop, from all fields designated on the maps in Appendix A-2 as “Restricted Grazing.” Mahard shall use this information to estimate phosphorus removal rates from the soil based on projected yields, and to determine whether supplemental nutrients (i.e. nitrogen, potassium, etc.) are needed to maximize vegetative production and resulting phosphorus removal. All results shall be provided to EPA and the appropriate State within fifteen (15) Days of receipt of either preliminary or final laboratory analytical data, whichever is received earlier.

#### **IV. BUFFER STRIPS**

50. Mahard shall establish and maintain 100-foot buffer strips in the locations indicated as “100' Buffer Strip” along the Riparian Areas specially identified on the Maps in Appendix A-2. Such buffer strips must be established and maintained in a manner consistent with the NRCS Conservation Practice Standard for Filter Strip, Code 393 (NRCS, TX, April 2009). Any access livestock have to or through Riparian Areas and buffer strips must be controlled and limited to ensure that the integrity and function of the buffer strip is not substantially impaired.

51. No later than 180 days after entry of this Decree, Mahard shall commence activities to establish the buffer strips specified in this Section IV of Appendix C. No later than 2 years after entry, Mahard shall have established such buffer strips.

#### **V. SOIL SAMPLING**

52. No later than 180 days after entry of this Decree and continuing on an annual basis thereafter, Mahard shall collect and analyze soil samples from each LMU that (a) is designated as “Restricted Grazing” on the maps in Appendix A-2 and (b) was actually used for grazing purposes in the preceding year, until all required soil test results fall below 200 ppm/400 #/acre for phosphorus.

53. All soil sampling performed pursuant to this Consent Decree shall be conducted using the methodology prescribed in OSU Fact sheet PSS-2207 (for use in Oklahoma) or TCEQ Regulatory Guidance RG-408 (July 2009) (for use in Texas).

54. Mahard shall, prior to any soil sampling event, provide at least three (3) business days advance notice to EPA and the appropriate State and an opportunity to split the samples.

55. Mahard shall submit to EPA and the appropriate State the analytical laboratory results of all soil samples obtained from any of the Facilities identified in Appendix A-1 within ten (10) Days of Mahard's receipt of the preliminary or final laboratory analytical data, whichever is received earlier. Upon request by Mahard, EPA and the appropriate State will provide to Mahard the laboratory analytical results from any samples obtained by EPA or the State.

56. Mahard may, at any time, submit soil sample laboratory analytical results to EPA and the appropriate State and request that an LMU designated as "No Grazing" on the applicable Map in Appendix A-2 be redesignated as "Restricted Grazing" in accordance with Paragraph 45, above. Likewise, Mahard may, at any time, submit soil sample laboratory analytical results to EPA and the appropriate State and request that an LMU designated as "Restricted Grazing" on the applicable Map in Appendix A-2 be redesignated without grazing restrictions in accordance with Paragraph 46, above.

57. EPA and the appropriate State will provide a response to any redesignation request made by Mahard pursuant to this Section within 90 days of receipt.

58. If EPA or the appropriate State, contemporaneously with Mahard, obtain soil samples the results of which would preclude the redesignation requested because the results are more than 10 ppm (or 20 #/acre) above the threshold, EPA or the appropriate State may reject the redesignation request. Upon such rejection, Mahard may elect to re-sample the LMU in question, with notice to EPA and the State, pursuant to this Section V of Appendix C. No redesignation request will be rejected if the samples obtained by EPA or the State exceed the threshold by 10 ppm (or 20 #/acre) or fewer.

59. Upon such a resampling effort, EPA and the applicable State will accept, for purposes of the redesignation request, the results of any re-sampling effort by Mahard unless either EPA or the State also re-samples and obtains results that are more than 10 ppm (or 20 #/acre) above the threshold.

## **VI. TERM OF APPENDIX C REQUIREMENTS**

60. The requirements of Section I (Nutrient Management Plans), III (Grazing and Forage Management), and IV (Buffer Strips) of this Appendix C shall apply at each Facility listed in Appendix A-1 until such time as Mahard has been in compliance with these requirements continuously for 5 (five) years following the Effective Date of this Decree.

61. Subject to Paragraph 62, below, the requirements of Section II (Land Application of Waste, Wastewater or Sludge) of this Appendix C shall apply at each Facility listed in Appendix A-1 until soil test results for the Facility, obtained pursuant to Section V of this Appendix C and approved by EPA and the applicable State, for all LMUs at the Facility, are below 200 ppm or 400 #/acre for phosphorus, or until 10 years after entry of the Consent Decree, whichever is sooner.

62. As to LMUs for which soil test results obtained pursuant to Section V of this Appendix C indicate Phosphorus below 200 ppm or 400 #/acre, Mahard may submit a request to EPA and the applicable State showing the results of the sampling and requesting termination, and EPA and the applicable State shall have sixty (60) days to approve such results or state why such results are not approved.

63. As to LMUs for which there are no soil test results indicating Phosphorus below 200 ppm or 400 #/acre, Mahard may terminate the requirements of Section II of this Appendix C at any point after 10 years after entry of this Consent Decree if it has secured approval from EPA and the applicable State of an enhanced Nutrient Management Plan designed to ensure that phosphorus levels continue to decrease at those fields. If the referenced LMUs are not associated with any permitted CAFO and will not be subject to any land-application by Mahard, no enhanced Nutrient Management Plan is required.

## **VII. SHORT-TERM NOTICE**

64. Whenever a Party is required to provide notice to another Party (or a response to a notice) under this Appendix C, the notice shall be by phone and either email or facsimile, as follows:

### For the U.S. EPA:

Willie Lane  
Chief, Water Resources Section  
214-665-8460  
lane.willie@epa.gov

### For the State of Oklahoma:

D.J. Parrish  
405-522-4659 or  
405-818-3529  
fax: 405-522-6357  
[dan.parrish@oda.state.ok.us](mailto:dan.parrish@oda.state.ok.us)

### For the State of Texas:

Kellie E. Billings  
Office of the Attorney General of Texas  
Environmental Protection and Administrative Law Division

P.O. Box 12548, MC-018  
Austin, Texas 78711  
[kellie.billings@oag.state.tx.us](mailto:kellie.billings@oag.state.tx.us)  
512-475-4014  
Facsimile: (512) 320-0052

For the TCEQ:  
Order Compliance Team  
Enforcement Division, MC-149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
512-239-2545  
Facsimile: (512) 239-0532

and to:

Water Section Manager  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Blvd.  
Abilene, Texas 79602-7833  
325-698-7674  
Facsimile: (325) 692-5869 (for Vernon-Chillicothe Facility)

or

Water Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951  
817-588-5800 or 254-965-9200  
Facsimile: (817) 588-5700 (for Prosper and Springhill Facilities)

**APPENDIX D:**

**MORTALITY MANAGEMENT**

**I. Texas**

65. No later than the Effective Date of this Decree, Mahard shall cease any transfer of carcasses between Facilities unless a composting plan is in place that is consistent with 30 T.A.C. 332, Subchapter B, and has been approved by EPA and TCEQ.

66. Mahard shall ensure that all carcass disposal at the Vernon-Chillicothe, Prosper, and Springhill Facilities is conducted in accordance with TCEQ Regulatory Guidance, RG-326, Handling and Disposal of Carcasses from Poultry Operations (August 2009) and in accordance with 30 T.A.C. § 335.25. Mahard shall collect all carcasses within 24 hours of death and properly disposed of them within three (3) Days of death. Animals must not be disposed of in any liquid manure or process wastewater system. Disposal of diseased animals shall be conducted in accordance with Tex. Agric. Code § 161.004.

**II. Oklahoma**

67. Mahard shall comply with the terms and conditions in Mahard's 4/29/09 Carcass Disposal Plan, as amended and supplemented by the letter from ODAFF, dated May 7, 2009, to Mahard (both attached here as the Appendix D Supplement).

**Appendix D (Supplement) to Consent Decree in:**  
*United States, State of Texas, and State of Oklahoma v. Mahard Egg Farm, Inc.*

Appendix D: Mortality Management

Mahard Egg Farm, Inc.'s Carcass Disposal Plan, dated April 29, 2009, as amended and supplemented by the letter from ODAFF, dated May 7, 2009, to Mahard Egg Farm, Inc.



**State of Oklahoma**  
**Department of Agriculture, Food, and Forestry**

2800 N. Lincoln Blvd., P.O. Box 528804, Oklahoma City, OK 73152 (405) 521-3864  
www.oda.state.ok.us

Brad Henry  
Governor

Terry L. Peach  
Secretary and Commissioner

May 7, 2009

Fred Williams  
Mahard Egg Farms, Inc.  
Box 248  
Prosper, TX 75078

RE: April 29, 2009 Mahard NEBO, Boogie Hill, and Ravia Carcass Disposal Plan (CDP)

Dear Mr. Williams:

The Department received letters from you or Clayton Cargill on March 18, 2009, April 1, 2009 (unreadable fax), and April 30, 2009, regarding carcass disposal options for the three (3) licensed Mahard Egg Farms, Boogie Hill, NEBO, and Ravia CAFO's. Your April 29, 2009 carcass disposal plan (CDP) letter was the first detailed legible proposal received recently by the Department. The following concepts, restrictions, and requirements are approved for carcass disposal by Mahard, at your three (3) Oklahoma licensed CAFO facilities.

- A) The CAFO Act in Title 2, Chapter 1, § 20-41 (B) specifies the following:
4. *"Animal waste" means that animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation;*

Please note that the CAFO act definition of animal waste includes carcasses.

- B) Your March 18, 2009, and April 29, 2009 Carcass Disposal Plan (CDP) is a proposal for the disposal of carcasses from the Mahard Nebo, Boogie Hill, and Ravia CAFO's. Your proposed plan is that your carcass disposal method utilizes the electric Ecodrum, Hot Rotating Drum Compost System (model 660 plus). The Ecodrum will be placed on a concrete pad at the west end of the Nebo commodity building. The Ecodrum and conveyor are required to be completely covered by a roof-structure. The Ecodrum composting process that will be utilized is the "Accelerated Aerobic Hot-Compost Ecodrum System."

- 1) The "Hopper Loading System" will be the 80 inches plus equipment.
- 2) Mahard will not be composting whole birds. A grinder will be used to shred all of the carcasses prior to placement in the Ecodrum.
- 3) The bulking, carbon materials to be used in the Ecodrum will be sawdust or shavings. The Department must pre-approve the use of any other bulking, carbon material.
- 4) Runoff or spillage from the Ecodrum is required to be cleaned up and properly disposed of on a daily basis.
- 5) The inside of the commodity barn, according to your March 18, 2009 letter, will be protected from rain and runoff. This task must be completed and approved by the Department prior to the start-up of the Ecodrum system.
- 6) At the completion of each composting process, intact bones will be sifted from the compost and broken-up and recycled for additional compost sessions. The compost material that is sold or given away shall not include bones that are of the size that are recognizable or discernable.
- 7) The completed, composted product is required to be stored in the "dry areas" in the commodity barn.
- 8) The completed, composted material can not be land applied on any Oklahoma Mahard land.
- 9) The completed, composted material will be sold or given away. Since Mahard will use the "Accelerated Aerobic Hot-Compost Ecodrum System," (page 4 of the "Mortality Composting-Basic Ecodrum System"), then soil injection is not required of the compost material. However, the land application of the compost must be handled as a nutrient and all land application requirements and set-backs must be adhered to by the applicant.
- 10) Refer to and adhere to the entire February 16, 2009 Mahard Nebo NPDES Pollution Prevention Plan; especially Sec. 3 (pages 8, 15, 16, 17, 18, 19, 25, revised 31, revised 32, 33, revised 34) and Sec. 4, page 10, sentence at the top of the page.
- 11) Note, that revised- DJP pages 31, 32, and 34 (forms 308, 308A, 309) are required to be completed by Mahard representatives at the time of the sale or gift-giving of composted material. Copies of these three (3) forms are required to be submitted to the ODAFF AEMS Division by the 10<sup>th</sup> of the month immediately after the month of sale or gift-giving of compost.
- 12) The transport of carcasses to Nebo from the Boogie Hill, Ravia CAFO's requires that the carcasses be placed in leak-proof bags and in sealed drums.



- 13) Any changes to the requirements specified in this letter are required to be pre-submitted in writing and pre-approved by the ODAFF, AEMS Division.
- 14) Changes by Mahard without ODAFF, AEMS pre-approval will result in a monetary fine being assessed and may result in the stoppage of the use of the Ecodrum system.

Respectfully,



D.J. Parrish, Director  
AEMS

Attachments

C: Larry Harden, General Counsel  
Geary Green  
Greg Turpin  
Jerry Saunders, EPA

mahard050709cms



**COMPOST  
OFFSITE WASTE RECIPIENTS LOG**

*Records must be maintained and updated daily to reflect all the transfer of compost/manure/litter/sludge/waste given to other persons for beneficial reuse on sites not controlled by the owner/operator of all CAFO facilities. The information below is required in addition to daily volumes transferred, Forms 308A and 309. Maintain at least one clean copy of this form in case offsite recipients are more numerous than the form will accommodate*

CUSTOMER NO.	CUSTOMER NAME & ADDRESS	Has customer received a copy of the	
Same as Form	& TELEPHONE NUMBER	annual compost and waste analysis sheet?	
308a-DJP		YES	NO

Make extra copies of this log sheet as required for proper record maintenance.

PPP Form 308 Revised-DJP

Mahard Egg Farms, Inc., Nebo, OK

COMPOST  
TO BE USED WITH FORMS 308 AND 308A

I, \_\_\_\_\_, as the  resident,  owner, ( both), of  
(Print Name of Compost Recipient)

the residence/property located at, \_\_\_\_\_,  
(Insert Rural Address)

in, \_\_\_\_\_, County, Oklahoma, do hereby willingly consent to  
(Enter County)

conduct the following activity(ies),

(Check all that apply):

Consent for Compost, Solid or Liquid Animal Waste Application for Beneficial Reuse,  
to be Applied on \_\_\_\_\_ Acres at Agronomic Rates. Latitude \_\_\_\_\_  
Longitude \_\_\_\_\_ (if available). The compost must be soil incorporated.

I will locate Permanent Odor Source Within a Quarter Mile of the Above Residence.  
I acknowledge that the above actions are regulated by the Oklahoma Department of  
Agriculture, Food, and Forestry (ODAFF), and I am committed to conduct operations on  
the facility, utilizing Best Management Practices to protect human and environmental  
welfare. The compost is required to be incorporated at the time of land application (soil  
incorporated).

Date of Signing: \_\_\_\_\_

Printed Name of property/residence owner: \_\_\_\_\_  
(where compost will be soil incorporated)

Signature of property/residence owner: \_\_\_\_\_  
(where compost will be soil incorporated)

Printed Name of Compost Recipient: \_\_\_\_\_  
(if different than owner above)

Signature of Compost Recipient: \_\_\_\_\_  
(if different than owner above)

PPP Form 309 Revised-DJP

Mahard Egg Farms, Inc., Nebo, OK



# Mahard Egg Farm, Inc.

BOX 248 • PROSPER, TEXAS 75078

RECEIVED

APR 30 2009

AG ENVIR MGMT SVCS  
OK DEPT OF AGRICULTURE

April 29, 2009

MR. DAN PARRISH  
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES  
PO BOX 528804  
OKLAHOMA CITY, OK.

Mr Parrish, Per our conversation of last evening, please accept my apology on the lack of communication from our staff and office to you on the proposed ecodrum composter that we have proposed using at the nebo ranch to handle our daily mortalities from this operation and the operation at boogie hill.

When we looked at alternatives to an ongoing problem of incomplete composting, this system was recommended by several of my contacts in the Midwest, including Mr, Mark Freidow from the Sparbo Company and from Mr. Chips Everhart from Rose Acres. Both have had experience with ecodrum and highly recommended the company to me.

Mr. Lee Corrus with Midwest Agsupply is our sales representative, and has spent much time with me in getting a composter to fill our needs. When I first spoke to lee, I told him I wanted a composter to handle at least a 1000 head of hens per day. This will greatly exceed our needs, but will result in a better end product by not overfilling the unit. He has assured me that the ecodrum will handle this and will produce a product free from bones, heads, feet etc. If we run into a situation where this is not the case then grinding the carcasses will assuredly solve this problem.

We would like to propose getting the departments go ahead on this proposal, and I would like to assure you again that in no way are we proposing to spread this compost anywhere on Mahard property, but hope we can find local sources to take the product. I would also like to assure you that unlike previous times, this will be managed to the departments satisfaction. If you need further info please call me directly at 214-460-8227 to discuss with me what I can do to provide what the department needs to move forward on this.

Thanks,

Fred Williams  
Production Manager

RECEIVED

APR 30 2009



### ecodrum™ Capacities:

- The Model 260 is approx. 366 cubic feet in volume. Daily capacity is up to 370 lbs, weekly capacity is up to 2,590 lbs.
- The Model 360 is approx. 549 cubic feet in volume. Daily capacity is up to 570 lbs, weekly capacity is up to 4,000 lbs.
- The Model 460 is approx. 732 cubic feet in volume. Daily capacity is up to 740 lbs, weekly capacity is up to 5,180 lbs.
- The Model 560 is approx. 915 cubic feet in volume. Daily capacity is up to 925 lbs, weekly capacity is up to 6,145 lbs.
- The Model 660 is approx. 1,098 cubic feet in volume. Daily capacity is up to 1,110 lbs, weekly capacity is up to 7,770 lbs.
- The Model 160 is a batch composter with approx. 183 cubic feet of volume and a weekly capacity of up to 1,000 lbs.

### Standard Features:

- Constructed of non-corrosive polyethylene material for durability and long life.
- Insulated with polyethylene foam for structural integrity and for year round composting.
- ecodrum™ has a 24 Hour Timer and Memory Chip to ensure uninterrupted operation of the drum and the option of setting desired operating time.
- Standard door is 47" x 33" for easy access and properly sealed for composting.



Manure Handling System

### Options:

- PLC controller and monitoring system.
- Wireless temperature, moisture and oxygen sensors
- Choice of 34" or 80" hopper loading system.
- Second rebulking door.
- Front attached aeration system.
- Front loading door for nursery operations.
- Analog temperature probe.

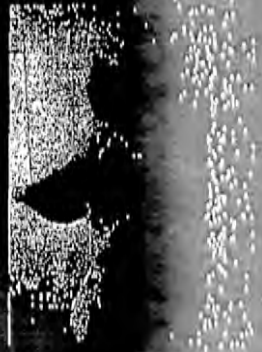
Bedding Recovery



Manure Processing



Animal Mortality Management



To learn more about how the ecodrum™ can benefit your operation contact us at:

GILLIS AGRI SYSTEMS  
 PO BOX 250  
 WILLMAR MN 56201-0250

[www.ecodrumcomposter.com](http://www.ecodrumcomposter.com)

Brochure printed & designed by Designz-N-More 204-242-4153

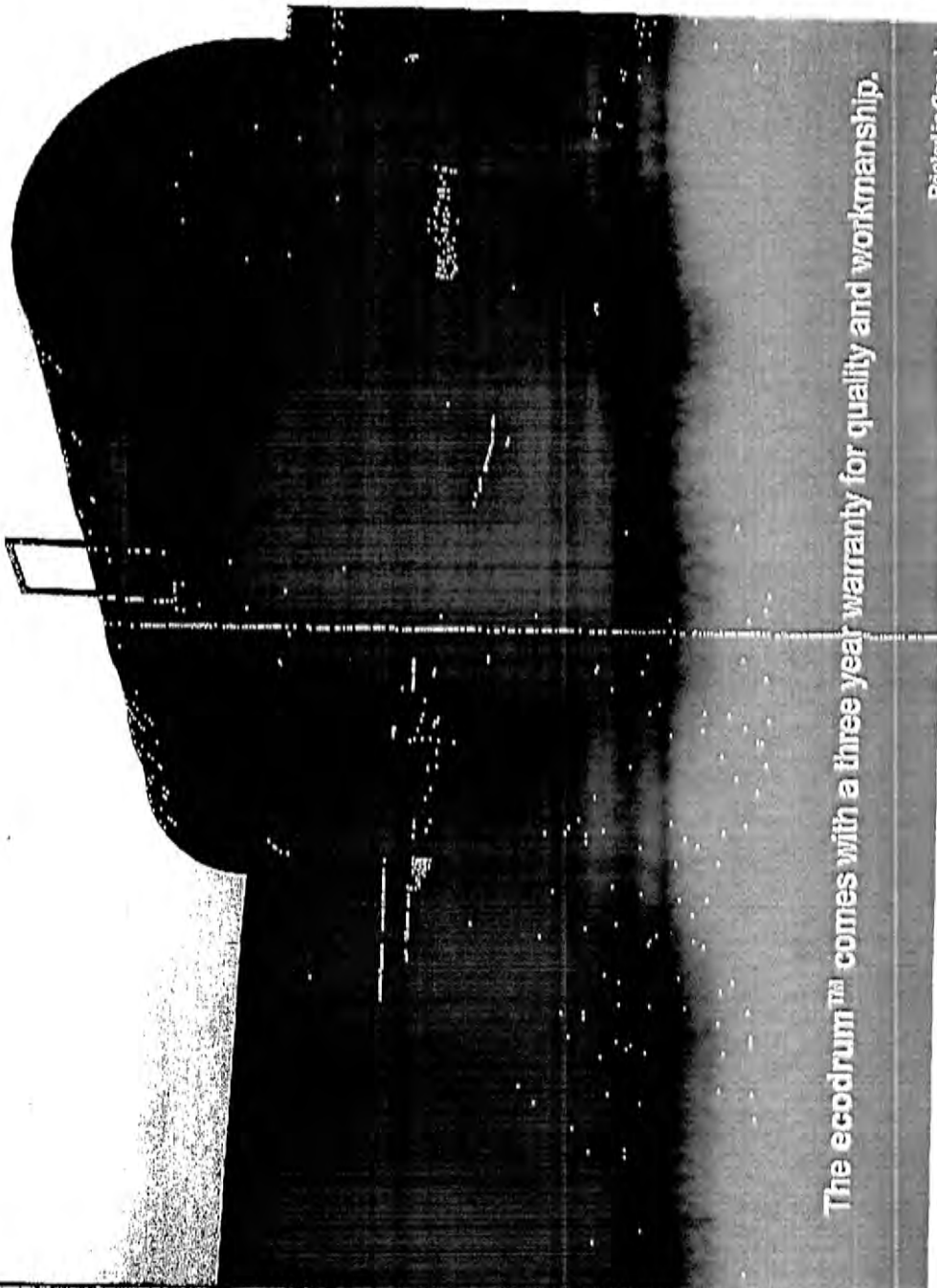
# ecodrum™

REGISTERED

APR 30 2009

AG ENVIR MGMT SVCS  
OK DEPT OF AGRICULTURE

**Composting made easy, with the most cost effective solution to animal mortality management, manure processing and bedding recovery!**



## Other Benefits:

The ecodrum™ is a cost-effective composter designed to continuously manage farm animal mortality, manure processing and bedding recovery in an environmentally sound way. The ecodrum has been designed for large-scale animal production areas and it offers the following benefits:

- Reduces odour and disease-causing organisms.
- Eliminates ground and water contamination.
- Allows for cold-weather composting.
- Hides animal decomposition from public view.
- Produces a high quality compost that can be used as a soil fertilizer in any kind of agricultural operation.

## Cost-effective:

The ecodrum™ is a year-round controlled system, processing mortalities, manure and bedding within in a short period of time. The cost of owning and operating the ecodrum™ is comparable to, and even less than that of other management options.

The ecodrum™ comes with a three year warranty for quality and workmanship.

Printed in Canada

## **APPENDIX E:**

### **REPORTING REQUIREMENTS**

68. In accordance with Section VI of this Consent Decree (Reporting Requirements), Mahard shall provide an Semi-Annual Report to the Plaintiffs on or before July 31 (for the first two quarters) and on or before January 31 (for the second two quarters) of each year. Unless a different reporting time frame is identified in this Consent Decree (e.g., for data, analytical results, or other information), Mahard shall submit the following documents to the Plaintiffs in each such Semi-Annual Report, in addition to any other reporting requirements of this Consent Decree:

- a. All records of any laboratory analyses of poultry litter, lagoon contents, soils, water (whether from lagoons, surface waters, or ground water), or Waste, including chains of custody;
- b. For each LMU identified on the Maps in Appendix A-2, for which commercial fertilizer was applied: the type of fertilizer used, and where, when, and how much fertilizer was applied;
- c. For any on-site land application of lagoon contents, a report identifying the location of the land application, the most recent soil sampling results (including chains of custody), information regarding the actual yield for each crop, and specific information regarding the quantity and contents of all nutrients applied during the reporting period;
- d. All ground water monitoring results related to lagoon closures, including chains of custody; and
- e. For any Waste provided to an off-site recipient: the location, date, and name of all Waste recipients, as well as the number of tons provided and the number of acres allocated by the recipient for application and the Waste nutrient sampling results, obtained at the time of removal.



## APPENDIX F: GRAZING PLAN

69. For LMUs subject to “Restricted Grazing” due to the field’s latest soil test phosphorous levels, as set forth in Appendix C, Section III, Mahard shall conform its grazing practices to the following Grazing Plan.
70. Yield goals should be based on reasonable forage production estimates and phosphorus retention in grazing animals. Specifically, yield goals should be based on estimated forage production in pounds per acre and a historical average daily gain of between 2.0-3.0 lb/day/hd of stocker animals.
71. Plant/Crop Nutrient Requirements. Supplemental applications of nutrients, specifically nitrogen and pH adjustments, may be required to ensure maximum vegetative production. Mahard shall utilize soil and vegetative sampling to provide a balance between the crop needs and the soil residuals. All applications of nitrogen shall be at the rates required to meet the forage production yield estimates.
72. If nitrogen is to be applied, all applications shall be split so as not to exceed 100 lb/Ac nitrogen per application event. Any commercial fertilizers should be applied at optimum soil moisture to ensure minimal losses through volatilization and denitrification. Applying N in 100 lb/Ac increments will allow these rates to be adjusted for potential yields for the current cropping year.
73. Phosphorous Removal from Stocker Cattle Grazing. Phosphorous requirements of stocker cattle were determined utilizing data from NRC and TX-NRCS practice code 590. The TX-NRCS practice code 590/633 spreadsheet assumes a removal rate of phosphorus of 0.68 lb P/100 lb live weight gain. A daily gain of 2.0-2.5 lb would require a 0.0136-.017 lb/day intake of total phosphorus for growth and maintenance of the animal.
74. Grazing Rotation. Mahard shall rotate animals based on an animal unit month (AUM), instead of permitting continuous grazing. Grazing rotations will consist of a 15-30 day graze period per field block followed by a 45-60 day deferment (unless environmental conditions warrant shorter periods). The grazing rotation(s) should be in conjunction with estimated forage production and adhere to the recommended vegetative heights.
75. To develop proper forage reserve, all fields should be deferred for ninety (90) consecutive days in the spring or fall (depending on warm or cool season forages) to build plant biomass. During periods of drought, Mahard should defer grazing until the vegetation has made an adequate recovery. Perennial warm season grasses that are at minimum grazing heights should be deferred no less than 30-45 days prior to the first killing frost to replenish carbohydrate reserves to maintain plant vigor and/or to stockpile forage for dormant season use. Perennial cool season grasses should not be grazed from about mid June until September, unless deferred from grazing at least 45 days during the active growth periods to maintain plant vigor.

76. Carrying Capacity/Stocking Rates. Mahard should set the rotation based on individual field capacities to ensure that over stocking does not occur to any field and possibly damaging the vegetative production. Actual day limits should be set for no less than fifteen (15) days and no more than thirty (30) Days with the carrying capacities adjusted accordingly to ensure maximum removal of forages without encroaching on the height restrictions as shown in Table 1.

77. The carrying capacity should be determined biannually, by the vegetative inventory and an estimated forage production for each field block. Carrying capacity determination based on forage production is relevant to estimating the removal of forages, thus contributing to the removal of phosphorus through grazing (metabolism) activities.

78. Vegetation. It is recommended that all fields be over-seeded with cool and warm season legumes to assist with the removal of soil phosphorus. Cool season forages, such as winter wheat, rye, orchard grass, wheatgrass, and arrowleaf clover, should be utilized on all field blocks to maximize grazing use (pounds of gain) and to remove excess nutrients during the winter months.

79. Once the species of each field has been determined, the grazing height limits/restrictions listed in Table 1 (or appropriate NRCS or land grant University recommendations) should be followed to ensure stand viability and sustainability. When minimum grazing heights for a particular field are met, animals should be removed until vegetation has recovered sufficiently to allow re-entry by livestock.

**Table 1. Grazing Use Height Restrictions**

<b>Species</b>	<b>Average Minimum Entry Height (inches)</b>	<b>Average Minimum Exit Height (inches)</b>
<b>Sod-forming</b>		
Bermudagrass: Common	6	3
Bermudagrass: Hybrid	6	3
Bahiagrass	6	3
Dallisgrass	6	3
<b>Short Height – Warm Season</b>		
Sideoats grama	6	4
<b>Short Height – Cool Season</b>		
Wheatgrass, Western	6	4
<b>Mid Height – Warm Season</b>		
Bluestems: Caucasian, Plains, Ganada, K.R., Old World, B. Dahl	8	4

Kleingrass	8	4
Lovegrass: Weeping, Common, Morpa, Ermelo, Wilman	8	4
<b>Mid Height – Cool Season</b>		
Tall Fescue	6	4
Tall Wheatgrass	8	4
Texas Wintergrass	6	4
Virginia and Canada Wildrye	8	6
<b>Tall Height</b>		
Bluestems: Sand, Big and Little	12	6
Indiangrass	12	6
Switchgrass	12	6
Eastern Gamagrass	12	6
Sacaton	12	6
<b>Legumes – Warm Season</b>		
Alyceclover	12	6
Lespedeza	8	4
Bundleflower	6	4
Sweet Clover	8	4
<b>Legumes – Cool Season</b>		
Clover: Ball, White, Berseem, Bur, Crimson and Arrowleaf	6	3
Vetch	6	3

80. Supplemental Feeding. To enhance soil phosphorus removal, Mahard shall not utilize supplemental animal feed containing added commercial forms of phosphorus unless necessitated by weather or environmental conditions. Mahard shall establish auxiliary fields that do not exhibit high soil test Phosphorus and that can be set aside for the purpose of feeding livestock during adverse climatic or environmental conditions.

81. If supplemental feeding becomes necessary due to adverse climatic or field conditions, dry forages in the form of hay shall be utilized instead of commercial/prepared feeds that will contain excess phosphorus. When supplemental feeding is necessary, all animals shall be removed from fields that exhibit soil phosphorus levels greater than 200 ppm/400 #/acre.

82. Pest Management. It is recommended that Mahard establish a management system, consistent with NRCS Practice Code 595, to address infestations of weeds, insects and disease to reduce adverse effects on plant growth and material resources. All appropriate pesticide product label requirements shall be followed along with rules and regulations established by the EPA and the respective state pertaining to the pesticide application.

83. Erosion Controls. It is recommended that Mahard monitor fields, consistent with NRCS Practice Codes 561-Heavy Use Area Protection, 342-Critical Area Planting, and 575-Animal Trails and Walkways, to ensure that heavily used areas, such as loafing/watering areas,

do not contribute to erosion issues. Areas that do exhibit active or potential erosion concerns should be noted and a treatment prescribed to alleviate further soil degradation.

**APPENDIX G: PUBLIC WATER SUPPLY REQUIREMENTS**

**FOR VERNON-CHILLICOTHE**

84. Immediately upon the Effective Date of this Decree, Defendant shall post the Notice of Drinking Water Nitrate Violations at all locations where employees or the public can obtain water for human consumption, as defined in 30 T.A.C. § 290.38(32), the terms of which are incorporated herein by reference.

85. Immediately upon the Effective Date of this Decree, Defendant shall provide bottled water or an alternative source of drinking water for employees and the public.

86. Immediately upon the Effective Date of this Decree, Defendant shall diligently pursue approval of effective treatment for nitrate removal from the TCEQ and take further action required by the TCEQ to secure approval of an effective treatment device, as set forth herein. Defendant shall respond to all requests for additional information from the TCEQ within thirty (30) Days of the request.

87. No later than thirty (30) days after the Effective Date of the Consent Decree, Defendant shall install one or more pilot systems and begin the collection of pilot study data to pursue approval of treatment for nitrate removal in accordance with 30 T.A.C. § 290.42(g).

88. No later than thirty (30) days after completion of the pilot study referenced in paragraph 87 above, Defendant shall submit to the TCEQ an exception request for approval of an effective treatment device for nitrate removal at the Vernon-Chillicothe Facility Public Water System that includes the required pilot study data in accordance with 30 T.A.C. § 290.42(g).

89. No later than sixty (60) Days after TCEQ approval of the treatment device for nitrate removal, referenced in paragraph 88 above, Defendant shall have installed a TCEQ-approved point-of-use system or ground water treatment system for constituent removal that meets the TCEQ drinking water standards for nitrate in accordance with 30 T.A.C. § 290.104(b) for all areas of the Public Water System where the water is used for human consumption.