

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2007-0849-AGR-E **TCEQ ID:** RN100802917 **CASE NO.:** 33629
RESPONDENT NAME: George Ted DeVries dba DeVries Dairy

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: DeVries Dairy, 1860 County Road 241, Erath County</p> <p>TYPE OF OPERATION: Dairy</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 24, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. George Ted DeVries, Owner, DeVries Dairy, 1860 County Road 241, Dublin, Texas 76446 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 22, 2007</p> <p>Date of NOV/NOE Relating to this Case: May 11, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Two violations were documented.</p> <p>WATER</p> <p>1) Failure to maintain and manage control facilities to retain all contaminated rainfall runoff from open lots and associated areas. Specifically, the investigator observed an uncontained open lot south of the Facility near Mr. DeVries' residence that was heavily stomped and devoid of vegetation [30 TEX. ADMIN. CODE § 321.36(c) (formerly 30 TEX. ADMIN. CODE § 321.40(1)) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03061, Section IV., General Description and Location of Waste Disposal Systems].</p> <p>2) Failure to show a reduction in phosphorus concentration in Zone 1 depth on land management units ("LMU") where a nutrient utilization plan ("NUP") with a phosphorus reduction component was implemented 12 months or more prior to the current soil sample results. Specifically, a NUP with a phosphorus reduction component was implemented on July 28, 2005. The NUP documented phosphorus levels of 341 parts per million ("ppm") on LMU No. 2 and 224 ppm on LMU No. 3. Based on the soil analysis report dated October 4, 2006, the phosphorus levels had increased to 714 ppm on LMU No. 2 and to 472 ppm on LMU No. 3 [30 TEX. ADMIN. CODE § 321.42(p) (formerly 30 TEX. ADMIN. CODE § 321.49(i)) and TPDES Permit No. 03061, Standard Provisions, Paragraph (f)].</p>	<p>Total Assessed: \$1,860</p> <p>Total Deferred: \$372 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,488</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, remove the cattle from the open lot south of the Facility and reseed the area as necessary to allow for revegetation or construct control facilities to manage waste, stormwater, and wastewater from the area in a manner that will protect surface and ground water quality;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.;</p> <p>c. Within 90 days after the effective date of this Agreed Order, develop and implement a new or amended NUP with an approved phosphorus reduction component that is certified by an employee of the National Resource Conservation Service ("NRCS"), a nutrient management specialist certified by the NRCS, the Texas State Soil and Water Conservation Board, Texas Cooperative Extension, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the Certified Professional Agronomist certified through the certification program of the American Society of Agronomy, a Certified Professional Soil Scientist certified through the certification program of the Soil Science Society of America, or a licensed geoscientist-soil scientist in Texas after approval by the Executive Director based on a determination by the Executive Director that another person or entity identified in this paragraph cannot develop the plan in a timely manner;</p> <p>d. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision c., as described in Ordering Provision e.; and</p> <p>e. The certification shall include detailed supporting documentation including</p>

		photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and c.
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Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

DATES	Assigned	21-May-2007	Screening	30-May-2007	EPA Due	
	PCW	30-May-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	George Ted DeVries dba DeVries Dairy		
Reg. Ent. Ref. No.	RN100802917		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	33629	No. of Violations	2	
Docket No.	2007-0849-AGR-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen	
Multi-Media		EC's Team	EnforcementTeam 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7

Notes: The penalty is enhanced due to three prior NOVs with violations not same or similar to those cited in this action and one final enforcement order containing a denial of liability and is reduced due to two notices of intent to conduct a self-audit.

Culpability Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts Subtotal 6
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 30-May-2007

Docket No. 2007-0849-AGR-E

PCW

Respondent George Ted DeVries dba DeVries Dairy

Policy Revision 2 (September 2002)

Case ID No. 33629

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 24%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The penalty is enhanced due to three prior NOVs with violations not same or similar to those cited in this action and one final enforcement order containing a denial of liability and is reduced due to two notices of intent to conduct a self-audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 24%

Screening Date 30-May-2007

Docket No. 2007-0849-AGR-E

PCW

Respondent George Ted DeVries dba DeVries Dairy

Policy Revision 2 (September 2002)

Case ID No. 33629

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 321.36(c) (formerly 30 Tex. Admin. Code § 321.40(1)) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03061, Section IV., General Description and Location of Waste Disposal Systems

Violation Description
Failed to maintain and manage control facilities to retain all contaminated rainfall runoff from open lots and associated areas. Specifically, the investigator observed an uncontained open lot south of the Facility near Mr. DeVries' residence that was heavily stumped and devoid of vegetation.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes
Failure to maintain vegetation in uncontained areas could result in human health or the environment being exposed to insignificant amounts of pollutants.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended based on documentation of the violation during the March 22, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent George Ted DeVries dba DeVries Dairy

Case ID No. 33629

Reg. Ent. Reference No. RN100802917

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment			0.0	\$0	\$0	\$0
Buildings			0.0	\$0	\$0	\$0
Other (as needed)	\$1,000	22-Mar-2007	31-Dec-2007	0.8	\$3	\$52
Engineering/construction			0.0	\$0	\$0	\$0
Land			0.0	\$0	n/a	\$0
Record Keeping System			0.0	\$0	n/a	\$0
Training/Sampling			0.0	\$0	n/a	\$0
Remediation/Disposal			0.0	\$0	n/a	\$0
Permit Costs			0.0	\$0	n/a	\$0
Other (as needed)			0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the cattle from the open lot and to reestablish vegetation in the area. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.0	\$0	\$0	\$0
Personnel			0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.0	\$0	\$0	\$0
Supplies/equipment			0.0	\$0	\$0	\$0
Financial Assurance [2]			0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.0	\$0	\$0	\$0
Other (as needed)			0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$54

Screening Date 30-May-2007	Docket No. 2007-0849-AGR-E	PCW
Respondent George Ted DeVries dba DeVries Dairy	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 33629	<small>PCW Revision May 25, 2007</small>	
Reg. Ent. Reference No. RN100802917		
Media [Statute] Water Quality		
Enf. Coordinator Lynley Doyen		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	30 Tex. Admin. Code § 321.42(p) (formerly 30 Tex. Admin. Code § 321.49(i)) and TPDES Permit No. 03061, Standard Provisions, Paragraph (f)	
Violation Description	Failed to show a reduction in phosphorus concentration in Zone 1 depth on land management units ("LMU") where a nutrient utilization plan ("NUP") with a phosphorus reduction component was implemented 12 months or more prior to the current soil sample results. Specifically, a NUP with a phosphorus reduction component was implemented on July 28, 2005. The NUP documented phosphorus levels of 341 parts per million ("ppm") on LMU No. 2 and 224 ppm on LMU No. 3. Based on the soil analysis report dated October 4, 2006, the phosphorus levels had increased to 714 ppm on LMU No. 2 and to 472 ppm on LMU No. 3.	

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	x	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	Failure to reduce phosphorus levels on LMUs could result in significant amounts of pollutants which do not exceed protective levels to be released into or adjacent to water in the state.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

One quarterly event is recommended based on the investigation date (March 22, 2007) through the date of screening (May 30, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent George Ted DeVries dba DeVries Dairy

Case ID No. 33629

Reg. Ent. Reference No. RN100802917

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	22-Mar-2007	29-Feb-2008	0.9	\$5	\$94	\$99
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with obtaining and implementing an approved, updated nutrient utilization plan. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$99

Compliance History

Customer/Respondent/Owner-Operator:	CN601128895 DEVRIES, GEORGE TED	Classification: AVERAGE	Rating: 20.11
Regulated Entity:	RN100802917 DEVRIES DAIRY	Classification: AVERAGE	Site Rating: 20.11
ID Number(s):	AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE PETROLEUM STORAGE TANK REGISTRATION	PERMIT ACCOUNT NUMBER PERMIT PERMIT REGISTRATION	18554 EF0052N WQ0003061000 TX0122866 77983
Location:	1860 COUNTY ROAD 241, ERATH CO, TX		Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	May 29, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 29, 2002 to May 29, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name: Lynley Doyen	Phone: 512-239-1364		

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/02/2002 ADMINORDER 2001-0791-AGR-E

Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(A)
 Rqmt Prov: SC6 & SPf PERMIT
 Description: Failed to prevent the discharge of irrigated wastewater into or adjacent to water in the state.

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 321, SubChapter B 321.42(a)[G]
 Rqmt Prov: SP's b & f PERMIT
 Description: Failed to report the wastewater discharge that occurred on April 4, 2001, and the information required in relation thereto.

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: SP9 & SPf PERMIT
 Description: Fail. submit quarterly soil samples to local district office & enforcement section of WQ division.

Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 321, SubChapter B 321.39(f)(28)(G)[G]
 TWC Chapter 26 26.121
 Rqmt Prov: SPf PERMIT
 Description: Fail. stop applying waste to field when phosphorus results on soil samples indicated levels greater than 200 ppm.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 01/28/2003 (21893)
- 2 03/20/2003 (27245)
- 3 11/05/2003 (251620)
- 4 07/13/2005 (349614)

5 07/28/2005 (401691)
6 05/26/2006 (463026)
7 05/14/2007 (554654)

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

Date: 01/22/2003 (21893)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)
Description: IN ACCORDANCE WITH SPECIAL PROVISION 9 OF PERMIT #03061, MR. DEVRIES IS REQUIRED TO SAMPLE EACH WASTE APPLICATION FIELD QUARTERLY. AT THE TIME OF THE INVESTIGATION, NO QUARTERLY SOIL ANALYSIS WERE SUBMITTED. THE ONLY SOIL ANALYSIS SUBMITTED WERE DATED 12/18/2001 AND 06/27/2002.

Date: 05/26/2006 (463026)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.41(a)(1)
Description: Failure to complete the required training.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)
Description: Failure of the on-site application records include: date, location, number of acres utilized during each event, acreage of each crop, no. dry tons, % N, % moisture of manure & yield.

Date: 01/26/2007 (537537)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)
Description: Failure to maintain wastewater transfer pipes.

F. Environmental audits.

Notice of Intent Date: 10/24/2002 (33804)
No DOV Associated

Notice of Intent Date: 09/30/2003 (263147)
No DOV Associated

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
GEORGE TED DEVRIES DBA
DEVRIES DAIRY
RN100802917

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0849-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding George Ted DeVries dba DeVries Dairy ("Mr. DeVries") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. DeVries appear before the Commission and together stipulate that:

1. Mr. DeVries owns and operates a dairy at 1860 County Road 241 in Erath County, Texas (the "Facility").
2. Mr. DeVries has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Mr. DeVries agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. DeVries is subject to the Commission's jurisdiction.
4. Mr. DeVries received notice of the violations alleged in Section II ("Allegations") on or about May 16, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. DeVries of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Eight Hundred Sixty Dollars (\$1,860) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. DeVries has paid One Thousand Four Hundred Eighty-Eight Dollars (\$1,488) of the administrative penalty and Three Hundred Seventy-Two Dollars (\$372) is deferred contingent upon Mr. DeVries' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. DeVries fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. DeVries to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. DeVries have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. DeVries has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Mr. DeVries is alleged to have:

1. Failed to maintain and manage control facilities to retain all contaminated rainfall runoff from open lots and associated areas, in violation of 30 TEX. ADMIN. CODE § 321.36(c) (formerly 30 TEX. ADMIN. CODE § 321.40(1)) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 03061, Section IV., General Description and Location of Waste Disposal Systems, as documented during an investigation conducted on March 22, 2007. Specifically, the investigator observed an uncontained open lot south of the Facility near Mr. DeVries' residence that was heavily stomped and devoid of vegetation.
2. Failed to show a reduction in phosphorus concentration in Zone 1 depth on land management units ("LMU") where a nutrient utilization plan ("NUP") with a phosphorus reduction component was implemented 12 months or more prior to the current soil sample results, in violation of 30 TEX. ADMIN. CODE § 321.42(p) (formerly 30 TEX. ADMIN. CODE § 321.49(i)) and TPDES Permit No. 03061, Standard Provisions, Paragraph (f), as documented during an investigation conducted on March 22, 2007. Specifically, a NUP with a phosphorus reduction component was implemented on July 28, 2005. The NUP documented phosphorus levels of 341 parts per million ("ppm") on LMU No. 2 and 224 ppm on LMU No. 3. Based on the soil analysis report dated

October 4, 2006, the phosphorus levels had increased to 714 ppm on LMU No. 2 and to 472 ppm on LMU No. 3.

III. DENIALS

Mr. DeVries generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. DeVries pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. DeVries' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: George Ted DeVries dba DeVries Dairy, Docket No. 2007-0849-AGR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Mr. DeVries shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, remove the cattle from the open lot south of the Facility and reseed the area as necessary to allow for revegetation or construct control facilities to manage waste, stormwater, and wastewater from the area in a manner that will protect surface and ground water quality;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.e. below;
 - c. Within 90 days after the effective date of this Agreed Order, develop and implement a new or amended NUP with an approved phosphorus reduction component that is certified by an employee of the National Resource Conservation Service ("NRCS"), a nutrient management specialist certified by the NRCS, the Texas State Soil and Water Conservation Board, Texas Cooperative Extension, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the Certified Professional Agronomist certified through the certification program of the American Society of Agronomy, a Certified Professional Soil Scientist certified through the certification program of the Soil Science Society of America, or a licensed geoscientist-soil scientist in Texas after approval by the Executive Director based on a determination by the Executive Director that another person or entity identified in this paragraph cannot develop the plan in a timely manner;

- d. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c., as described in Ordering Provision No. 2.e. below; and
- e. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. DeVries. Mr. DeVries is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. DeVries fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. DeVries' failure to comply is not a violation of this Agreed Order. Mr. DeVries shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. DeVries shall notify the Executive Director within seven days after Mr. DeVries becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. DeVries shall be made

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Abstract The present study was conducted to determine the seasonal and spatial variation in the abundance and biomass of *Channa striata* in the Kuching River, Sarawak, Malaysia. A total of 1000 individuals were collected from 10 sampling sites during four seasons (dry, pre-monsoon, monsoon, and post-monsoon). The abundance and biomass of *C. striata* were significantly higher during the pre-monsoon season compared to the other seasons. The abundance and biomass of *C. striata* were also significantly higher at the upstream sites compared to the downstream sites. The present study provides valuable information on the seasonal and spatial variation in the abundance and biomass of *C. striata* in the Kuching River, Sarawak, Malaysia.

Keywords *Channa striata* · Abundance · Biomass · Seasonal variation · Spatial variation · Kuching River, Sarawak, Malaysia

Introduction *Channa striata* (Pisces: Channidae) is a widely distributed and economically important freshwater fish species in Southeast Asia (Wong and Tan 2008). It is a highly adaptable species that can tolerate a wide range of environmental conditions and is commonly found in rivers, streams, and floodplains. The species is valued for its meat and is also used in traditional medicine. The abundance and biomass of *C. striata* are influenced by various factors, including seasonality and spatial variation. This study aims to determine the seasonal and spatial variation in the abundance and biomass of *C. striata* in the Kuching River, Sarawak, Malaysia.

The Kuching River is a major river in Sarawak, Malaysia, and is home to a diverse fish community. *C. striata* is one of the most abundant and important species in the river. The river is characterized by a seasonal monsoon climate, with a dry season from February to May and a wet season from June to November. The river is also characterized by a high degree of spatial variability in its physical and chemical characteristics. This study was conducted to determine the seasonal and spatial variation in the abundance and biomass of *C. striata* in the Kuching River, Sarawak, Malaysia.

The present study was conducted over a period of 12 months, from February 2018 to January 2019. The study area was divided into 10 sampling sites, five in the upstream and five in the downstream. The upstream sites were located at the headwaters of the river, while the downstream sites were located near the confluence of the river with the Sarawak River. The abundance and biomass of *C. striata* were determined using a standardized method of gillnetting. The gillnets were set in the river for 24 h and were checked daily. The fish were then counted and weighed. The abundance and biomass of *C. striata* were expressed as individuals per 100 m² and kg per 100 m², respectively.

in writing to the Executive Director. Extensions are not effective until Mr. DeVries receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. DeVries in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. DeVries, or three days after the date on which the Commission mails notice of the Order to Mr. DeVries, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szallier
For the Executive Director

9/16/07
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

George Ted DeVries
Signature

7-17-07
Date

George Ted DeVries
Name (Printed or typed)
Authorized Representative of
George Ted DeVries dba DeVries Dairy

OWNER
Title

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

