

EXECUTIVE SUMMARY - ENFORCEMENT MATTER**DOCKET NO.:** 2008-0854-AGR-E **TCEQ ID:** RN100802917 **CASE NO.:** 35934**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, approximately 4 miles southwest of the City of Stephenville and 6.5 miles northeast of the City of Dublin in Erath County</p> <p>TYPE OF OPERATION: Concentrated animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional pending enforcement action regarding this facility location, Docket No. 2009-0488-MWD-E.</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 May 4, 2009. Comments were received on May 4, 2009 from Lloyd Gosselink, Attorney At Law, 816 Congress Avenue, Suite 1900, Austin, Texas 78701.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 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: July 11, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 8, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation. This case was remanded from the May 6, 2009 Commission Agenda, it is now ready for consideration.</p> <p>WATER</p> <p>1) Failure to prevent a discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to the water in the state [30 TEX. ADMIN. CODE § 321.31(a), Permit No. 03061, Special Provision 6, and TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to notify the TCEQ orally within 24 hours of the discharge that occurred on July 10, 2008 and in writing within 14 working days of the discharge [30 TEX. ADMIN. CODE § 321.44(a) and TEX. WATER CODE § 26.039(b)].</p> <p>3) Failure to collect samples from at discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge [30 TEX. ADMIN. CODE § 321.44(b)].</p>	<p>Total Assessed: \$4,350</p> <p>Total Deferred: \$870 <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: \$3,480</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) Completed the excavation of the site where the break occurred and replaced the irrigation pipe by July 25, 2008;</p> <p>b) Submitted a report to the TCEQ of the discharge that occurred on July 10, 2008 on July 30, 2008; and</p> <p>c) Collected samples from the discharge that occurred on July 10, 2008 on July 11, 2008.</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:</p> <p>i) Development and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of unauthorized discharges from the Facility; and</p> <p>ii) Update operational guidance and conduct employee training to ensure sampling of unauthorized discharges are conducted within the required time period and the reporting of unauthorized discharges to the TCEQ is properly accomplished.</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): WQ0003061000



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TELECOPIER COVER SHEET

May 4, 2009

PLEASE DELIVER THE FOLLOWING PAGES:

To: Jorge Ibarra, P.E. (512) 239-2550

Client No.: 2402-04

From: Lauren J. Kalisek

No. of Pages: 5 + cover sheet

Subject: Comments on Proposed Agreed Order for George DeVries Dairy:
 Docket No.: 2008-0854-AGR-E (2402-04)

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Lloyd Gosselink Rochelle & Townsend, P.C.



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Ms. Kalisek's Direct Line: (512) 322-5847
E-mail: lkalisek@lglawfirm.com

May 4, 2009

Jorge Ibarra, P.E.
Enforcement Coordinator
Texas Commission for Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE
Fax Number: (512) 239-2550

Re: Comments on Proposed Agreed Order for George DeVries Dairy;
Docket No.: 2008-0854-AGR-E (2402-04)

Dear Mr. Ibarra:

Please accept these written comments on behalf of the Bosque River Coalition (the "Coalition") concerning the above-referenced Proposed Agreed Order ("AO") for George DeVries Dairy (the "Respondent"). The Coalition is a Texas non-profit corporation formed for the purpose of furthering the protection and enhancement of water quality in the Bosque River watershed. Its membership is comprised of concerned property owners and interests within the watershed. Please feel free to contact me at my law firm, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, phone number (512) 322-5847, fax number (512) 472-0532, concerning any aspect of these comments.

WRITTEN COMMENTS

The Coalition appreciates the Texas Commission on Environmental Quality's ("Commission" or "TCEQ") preparation of the AO and this opportunity to provide comments, and it hereby provides comments to the preparation of the AO and penalty calculation contained therein, as follows:

1. Classification of the Agreed Order

TCEQ utilizes two types of agreed orders—a 1660-styled order, like the one issued to the Respondent, and a findings order. A findings order contains findings of fact and conclusions of law as to a respondent's violations, whereas a 1660-styled order allows a respondent to generally

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deny the violations.¹ TCEQ established a policy for using findings orders, entitled "Criteria for Use of Findings Orders" (the "Findings Policy").² Based upon the Findings Policy, the Coalition contends that the AO should be a findings order instead of a 1660-styled order. The Findings Policy provides four criteria or circumstances for when a findings order will be used. Only one of the four criteria need be met to qualify for a findings order.³

As applied to the Respondent, a findings order should be used because of the applicability of the third and/or fourth criteria. The third criterion requires a findings order for three repeated enforcement actions over the prior five-year period for the same violation.⁴ In addition to the AO, the Respondent has two other agreed orders concerning an unauthorized discharge of wastewater—Agreed Order Docket No. 2007-1572-AGR-E and the pending enforcement matter TCEQ Docket No. 2009-0488-MWD-E. Pursuant to the Findings Policy, TCEQ must use a findings order instead of 1660-styled order since the third criterion is met.

A findings order is also required under the fourth criterion. The fourth criterion provides that a findings order shall be required when in the judgment of the enforcement coordinator, investigator, legal staff, and appropriate managers the "respondent has demonstrated a pattern of disregard for environmental laws" regardless of whether the specific violations at issue are the same violations.⁵ The Respondent's history of noncompliance with environmental laws is a perfect example of such "pattern of disregard." The compliance history of the Respondent already includes two agreed orders and three written notice of violations ("NOVs"). The following are some of the violations noted in the TCEQ files concerning the Respondent over the past three years. The occurrences marked with an asterisk have resulted in formal enforcement actions.

- April 18, 2006 - Failure to accurately represent management practices
- November 11, 2006 - Failure to maintain irrigation equipment
- March 22, 2007 - Failure to construct control facilities to contain contaminated runoff*
- March 22, 2007 - Failure to show a reduction in phosphorus concentration in LMUs*
- July 19, 2007 - Unauthorized discharge of wastewater*
- July 25, 2007 - Unauthorized discharge of wastewater*
- October 4, 2007 - Wastewater applied to unauthorized LMUs
- November 2, 2007 - Wastewater applied to unauthorized LMUs*
- December 6, 2007 - Wastewater applied to unauthorized LMUs*
- February 8, 2008 - Confined cattle with no runoff containment*
- February 11, 2008 - Solids applied to unauthorized LMUs*

¹ TCEQ, *Criteria for Use of Findings Orders*, January 18, 2002, available online at: <http://www.tceq.state.tx.us/compliance/enforcement/policy/findings.html>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ TCEQ, *supra* note 1.

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- March 12, 2008 - Evidence of discharge in the creek*
- March 12, 2008 - Confined cattle with no runoff containment*
- March 12, 2008 - Applying solids to LMUs contrary to NMP/NUP*
- April 22, 2008 - Failure to implement current NMP/NUP*

In addition, another enforcement matter is being prepared with the TCEQ Docket No. 2009-0488-MWD-E. The Respondent's actions associated with this enforcement matter further establish the Respondent's pattern of disregard for environmental laws when it attempted in 2007 to escape a TCEQ enforcement action for applying its wastewater to unauthorized fields.⁶ According to the DeVries Investigation Report, the Respondent responded to the allegation by stating that it "no longer owned the property" upon which it was illegally applying waste. The Respondent's representative subsequently produced a warranty deed indicating that the Respondent, George DeVries, transferred ownership of the subject property to Dublin Ranch, LLC⁷—presumably so that the Respondent could claim its waste was being applied to a third-party field, instead of having to acknowledge that it was illegally applying waste to a field it controlled that was not an LMU under its existing permit. A cursory review of this warranty deed, however, shows that George DeVries and Dublin Ranch, LLC share identical mailing addresses.⁸ Records maintained with the Texas Secretary of State list George DeVries as the sole manager of, and registered agent for, Dublin Ranch, LLC.⁹ Indeed, the TCEQ Regional Office was also able to locate a copy of a lease agreement between George DeVries and Dublin Ranch, LLC by which Mr. DeVries retained operational control of the property in contravention of Section 321.42(j) of the TCEQ's rules regarding third-party fields. This artifice created and controlled exclusively by the Respondent was clearly an attempt on the Respondent's part to establish the subject property as a third-party field and avoid potential enforcement liability for its illegal wastewater application.

Time and again, the Respondent has shown its unwillingness to respect the spirit of TCEQ's rules. Consequently, due to the Respondent's clear pattern of disregard for environmental laws, the Coalition asserts that TCEQ staff should determine that the AO should be a findings order under which the Respondent is not allowed to generally deny the allegations set forth therein. Because the AO should be a findings order, the twenty percent (20%) reduction for deferral for expedited settlement is inapplicable and should not result in any reduction of the penalty.

2. Compliance History Worksheet

Under the Compliance History Worksheet for the AO, TCEQ only recognizes three NOV's and two agreed orders. This compliance history fails to consider the pending enforcement matter TCEQ Docket No. 2009-0488-MWD-E concerning alleged violations occurring in November 2007, December 2007, February 2008, and March 2008—all occurring prior to the

⁶ TCEQ Investigation Report, DeVries, George Ted, CN601128895, Investigation# 600064 (the "DeVries Investigation Report").

⁷ DeVries Investigation Report, Investigation Comments; DeVries Investigation Report, Attachment B.

⁸ DeVries Investigation Report, Attachment B.

⁹ Records of the Texas Secretary of State for Dublin Ranch, LLC.

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alleged violations associated with the AO. Therefore, the penalty calculation does not accurately represent the Respondent's compliance history. This pending enforcement matter, like the AO, should be a findings order, meaning that the Compliance History Worksheet should include an additional twenty-five percent (25%) adjustment for this pending enforcement matter.

Furthermore, the Compliance History Worksheet improperly indicates that the Respondent is not a "repeat violator." Pursuant to Section 60.2(d), Title 30 of the Texas Administrative Code, the Respondent qualifies as a repeat violator due to the number of major violations incurred and the total criteria points for the site.¹⁰ Because of the Respondent's status as a "repeat violator" and according to the "Penalty Policy of the Texas Commission on Environmental Quality" (the "Penalty Policy"), an adjustment percentage of twenty-five percent (25%) should have been utilized in the Compliance History Worksheet.

3. Calculation of Penalty

The AO contains three violations for which the penalty has been assessed. The Coalition asserts that Violation Number 1 ("Violation 1") and Violation Number 3 ("Violation 3") were improperly calculated and should be recomputed to reflect the appropriate penalty that should be assessed. Violation 1 concerns a failure to prevent discharge of wastewater and is identified as an "actual release" causing only "minor harm." Under the Penalty Policy, a minor harm occurs when "[h]uman health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation."¹¹ No evidence exists to indicate that the harm resulting from the discharge was minor. Respondent did not conduct the appropriate sampling subsequent to the unauthorized discharge (Violation 3). Given the Respondent's compliance history, TCEQ should not allow the Respondent the benefit of the doubt that the discharge was in fact minor, but should instead classify the penalty as a "major harm," when "[h]uman health or the environment has been exposed to pollutant which exceed levels that are protective of human health or environmental receptors as a result of the violation."¹² In fact, due to the Respondent's known attempts to avoid enforcement, it is not outside the realm of possibility that sampling was delayed to prevent collection of evidence proving that the discharge qualified as a major harm. Due to the lack of evidence resulting from the Respondent's own actions, instead of the ten percent (10%) adjustment of the penalty for a minor harm, TCEQ should assess the fifty (50%) adjustment for a major harm for Violation 1.

Additionally, under Violation 1, the unauthorized discharge occurred on July 11, 2008, but was not remedied until July 25, 2008, meaning the violation lasted for 15 days, and in actuality, the unauthorized discharge may have lasted 15 days. Because Violation 1 should be considered a major harm, under the Penalty Policy, each day should have been considered a violation event resulting in 15 violation events.

¹⁰ 30 TEX. ADMIN. CODE § 60.2(d).

¹¹ TCEQ, *Penalty Policy of the Texas Commission on Environmental Quality*, pg. 6, September 2002.

¹² *Id.*

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Violation 3 addresses the Respondent's failure to collect samples from discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge. The harm associated with Violation 3 is classified as a "potential release" causing "moderate harm," meaning that the violation "could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment," as noted by TCEQ in the penalty calculation for Violation 3. Just as with Violation 1, Violation 3 should be considered an "actual release," for an actual release did occur, causing "major harm" due to the lack of evidence as to what the actual harm may have been as a result of the Respondent's failure to collect samples. Properly classified, TCEQ should assess a fifty (50%) adjustment for Violation 3 instead of a ten percent (10%) adjustment.

TCEQ also inappropriately classified Violation 3 as a single event. The broken irrigation line that caused the unauthorized discharge was not repaired until July 25, 2008. No evidence is provided indicating that the unauthorized discharge did not occur from July 10, 2008 to July 25, 2008, meaning that the Respondent should have collected samples of the discharge during the entire fifteen (15) day period. Therefore, because Violation 3 is properly classified as an actual release causing major harm and occurred for fifteen (15) days, not one day, the number of violation events should have been fifteen (15) as with Violation 1.

Based upon the percentage adjustment increases mandated by the Respondent's actual compliance history and the penalty increases required for Violations 1 and 3, the Coalition contends that the appropriate penalty that the Respondent should be assessed is \$294,450.

The Bosque River Coalition hereby requests that the Executive Director consider these comments in evaluating the proposed Agreed Order for the George DeVries Dairy. The Coalition appreciates the opportunity to submit these comments and the consideration it hopes the Executive Director and TCEQ staff will give to them.

Sincerely,


Lauren Kalisek

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 9, 2009

Ms. Lauren Kalisek
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Re: Comment Received, Proposed Agreed Enforcement Order
George Ted Devries dba Devries Dairy
RN100802917; Docket No. 2008-0854-AGR-E; Enforcement Case No. 35934

Dear Ms. Kalisek:

On May 4, 2009, we received your letter concerning the proposed agreed enforcement order for George Ted Devries dba Devries Dairy ("the Respondent") in Erath County, Texas. Your letter has been forwarded to our General Counsel's Office to be considered by the Commission when this case is taken up at Agenda. We'd like to take this opportunity to respond to your comments.

You indicate that a findings order should have been used for this case based on your interpretation of the TCEQ's established findings order criteria. Enforcement actions, Docket No. 2008-0854-AGR-E and Docket No. 2009-0488-MWD-E, are pending enforcement actions and are not considered part of the Respondent's compliance history until the orders are issued by the Commission and effective. Therefore, Criteria No. 3 of the Findings Order Criteria has not been met.

Criteria No. 4 requires the use of a findings order when "Regardless of specific violations, a respondent has demonstrated a pattern of disregard for environmental laws." The Respondent's compliance history includes two 1660-styled agreed orders and three written notice of violations ("NOVs"). Since none of these enforcement actions contain repeat violations, TCEQ does not concur that the Respondent's compliance history demonstrates a pattern of disregard for environmental laws.

Since Criteria Nos. 3 and 4 for a findings order have not been met for this enforcement action, the Respondent is entitled to a 1660-styled order, and an associated 20% deferral for expedited settlement.

You stated in your letter that the Compliance History Worksheet for this Agreed Order only recognizes three NOVs and two agreed orders. You go on to state that the pending enforcement action was not included and should have been. Again, pending enforcement actions are not included as part of a Respondent's compliance history as these pending cases are not yet approved by the Commission and final. Therefore, an additional 25% upward adjustment is not appropriate.

Ms. Lauren Kalisek

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You also indicated that the compliance history worksheet improperly indicates that the Respondent is not a "repeat violator". The compliance history was run in August of 2008, which means the rating period that was used was September 1, 2007 to August 31, 2008. At the time that the compliance history was evaluated for the purpose of calculating a penalty the Respondent was not a repeat violator. Therefore, an additional 25% upward adjustment is not appropriate.

You stated in your letter that Violation Nos. 1 and 3 in the proposed agreed order were improperly calculated.

Violation No. 1, concerning a failure to prevent discharge of wastewater, is categorized as an "actual release" with a "minor harm" on the penalty calculation worksheet under the categories of harm matrix. You indicated that this violation should be classified as "actual release" with a "major harm". Since there is no documented evidence of significant harm to human health or the environment, the violation was classified as an "actual release" with a "minor harm." Therefore, the penalty is assessed at 10% of the base penalty. Additionally, you stated that in Violation No. 1, the unauthorized discharge occurred on July 11, 2008 and was not corrected until July 25, 2008, 15 days after it began. You then stated that since this violation should have been classified as an "actual release" with a "major harm," the penalty should have been assessed a total of 15 events based on the TCEQ's penalty policy. The violation was classified as an "actual release" with a "minor harm, therefore, one quarterly event is warranted based on TCEQ's penalty policy.

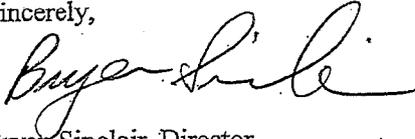
Violation No. 3, regarding the failure to collect samples from a discharge that occurred on July 10, 2008, within 30 minutes of the initial discharge, is categorized as a "potential release" with a "moderate harm" on the penalty calculation worksheet under categories of harm. You stated in your letter that this violation should have been classified as an "actual release" with "major harm" because an actual release did occur. You also claim that the Respondent should have collected samples for the entire 15 day period that the irrigation pipe was broken, and that the penalty should have been assessed a total of 15 events based on the TCEQ penalty policy. The violation documented by the investigator is for not taking the required samples at the time of the unauthorized release and it is a one time requirement. TCEQ's position is that this violation was properly classified as a "potential release" with "moderate harm", and one single event. Therefore, no increase in penalty is warranted. Additionally, the penalty for the unauthorized release is already addressed in Violation No. 1.

We appreciate your input into the enforcement action currently pending against the Respondent. Your name has been added to the mailing list to receive a copy of the final order, should the Commission adopt it.

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Mr. Jorge Ibarra, P.E., is the Enforcement Coordinator assigned to this case. If you have further concerns or comments related to the order, please do not hesitate to call Mr. Ibarra at (817) 588-5890. For complaints related to the Respondent's current operating conditions or procedures, you should continue to contact our Stephenville Regional Office at (254) 965-9200.

Sincerely,



Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

BS/jai

cc: Mr. Les Trobman, General Counsel, TCEQ
Mr. Blas Coy, Public Interest Counsel, TCEQ
Ms. LaDonna Castañuela, Chief Clerk, TCEQ
Mr. Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office, TCEQ

Mr. Lauren Kalisek
Page 4

bcc: Mr. Jorge Ibarra, P.E., Coordinátor, Enforcement Division, MC R-04
Central Records, MC 213, Building E, 1st Floor, WQ0003061000
Enforcement Division Reader File

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Bryan W. Shaw, Ph.D., Chairman
Buddy Garcia, Commissioner
Carlos Rubinstein, Commissioner
Les Trobman, General Counsel

Date: September 10, 2009

Thru: *BKS* Bryan Sinclair, Director, Enforcement Division

From: Susan Johnson, Manager, Enforcement Division

Subject: Response to Comment Received Concerning Proposed Agreed Enforcement Order, George Ted Devries dba Devries Dairy, Erath County
RN100802917, Enforcement Case No. 35934, Docket No. 2008-0854-AGR-E

In response to a publication in the *Texas Register* on April 3, 2009, one comment has been received regarding a proposed agreed enforcement order requiring certain actions of George Ted Devries dba Devries Dairy. The comment was received within the thirty-day public comment period.

The proposed order resolves violations of: 30 TEX. ADMIN. CODE § 321.31(a), Permit No. 03061, Special Provision 6 and TEX. WATER CODE § 26.121(a) for failing to prevent a discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to the water in the state. Specifically, during the investigation conducted on July 11, 2008, due to a broken irrigation line that occurred on July 10, 2008, a discharge of wastewater was observed leaving the Facility and crossing under County Road 241; 30 TEX. ADMIN. CODE § 321.44(a) and TEX. WATER CODE § 26.039(b) for failing to notify the TCEQ orally within 24 hours of a discharge that occurred on July 10, 2008 and in writing within 14 working days of the discharge. Specifically, the report was submitted to the TCEQ on July 30, 2008; and 30 TEX. ADMIN. CODE § 321.44(b) for failing to collect samples from a discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge. Specifically, samples were not taken of the discharge until July 11, 2008. The violations were documented on July 11, 2008. TCEQ staff and George Ted Devries dba Devries Dairy agreed on the terms of the proposed order on March 6, 2009. The order would assess a Four Thousand Three Hundred Fifty Dollar (\$4,350) penalty, of which Eight Hundred Seventy Dollar (\$870) is deferred in accordance with the expedited order process.

A copy of the comment, and the staff response to the comment, are attached for your consideration. In summary, the commentor is expressing concerns regarding the classification of the proposed Agreed Order and the appropriateness of the assessed penalty. Staff's position, as reflected in the response, is that the appropriate Agreed Order was proposed and that the proposed penalty was appropriately calculated. Accordingly, the Enforcement Division recommends that you adopt this proposed order.

Attachments: Commentor's Letter Dated May 4, 2009, Staff's Response Letter

cc: Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office
Jorge Ibarra, P.E., Coordinator, Enforcement Division
Central Records, MC 213, Building E, 1st Floor, WQ0003061000
Enforcement Division Reader File



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	11-Aug-2008	Screening	12-Aug-2008	EPA Due	
	PCW	27-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	George Ted Devries dba Devries Dairy
Reg. Ent. Ref. No.	RN100802917
Facility/Site Region	4-Stephenville
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35934	No. of Violations	3
Docket No.	2008-0854-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	45.0% Enhancement	Subtotals 2, 3, & 7	\$1,350
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Notes
The Respondent was issued three NOV's without the same/similar type of violations, two 1660 Agreed Orders containing denial of liability, and submitted one Notice of Intent.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$68
Approx. Cost of Compliance: \$1,400
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,350
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$4,350

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,350
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DEFERRAL	20.0% Reduction	Adjustment	-\$870
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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	\$3,480
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Screening Date 12-Aug-2008	Docket No. 2008-0854-AGR-E	PCW
Respondent George Ted Devries dba Devries Dairy		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35934		<i>PCW Revision June 12, 2008</i>
Reg. Ent. Reference No. RN100802917		
Media [Statute] Water Quality		
Enf. Coordinator Jorge Ibarra, P.E.		

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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

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

Adjustment Percentage (Subtotal 3) 0%

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

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent was issued three NOVs without the same/similar type of violations, two 1660 Agreed Orders containing denial of liability, and submitted one Notice of Intent.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date 12-Aug-2008	Docket No. 2008-0854-AGR-E	PCW	
Respondent George Ted Devries dba Devries Dairy	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 35934	<small>PCW Revision June 12, 2008</small>		
Reg. Ent. Reference No. RN100802917			
Media [Statute] Water Quality			
Enf. Coordinator Jorge Ibarra, P.E.			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 321.31(a), Permit No. 03061, Special Provision 6 and Tex. Water Code § 26.121(a)		
Violation Description	Failed to prevent a discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to the water in the state. Specifically, during the investigation conducted on July 11, 2008, due to a broken irrigation line that occurred on July 10, 2008, a discharge of wastewater was observed leaving the Facility and crossing under County Road 241.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual <input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
	Potential <input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>
>> Programmatic Matrix			
	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Falsification <input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>
Matrix Notes	Failure to prevent a discharge or disposal of waste or wastewater from animal feeding operations resulted in the release of insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment.		
		Adjustment	<input type="text" value="\$9,000"/>
		<input type="text" value="\$1,000"/>	
Violation Events			
Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="15"/>
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	Semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
One quarterly event is recommended from the date the discharge began (July 10, 2008) to the date of repairs (July 25, 2008).			
Good Faith Efforts to Comply			<input type="text" value="0.0%"/> Reduction <input type="text" value="\$0"/>
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
		Violation Subtotal	<input type="text" value="\$1,000"/>
Economic Benefit (EB) for this violation			Statutory Limit Test
Estimated EB Amount	<input type="text" value="\$49"/>	Violation Final Penalty Total	<input type="text" value="\$1,450"/>
		This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$1,450"/>

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 35934
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	10-Jul-2008	1-Jul-2009	0.98	\$49	n/a	\$49

Notes for DELAYED costs

Estimated cost to excavate and replace the broken irrigation line. Date required is the date the discharge began. Final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$49

Screening Date 12-Aug-2008	Docket No. 2008-0854-AGR-E	PCW																		
Respondent George Ted Devries dba Devries Dairy	<small>Policy Revision 2 (September 2002)</small>																			
Case ID No. 35934	<small>PCW Revision June 12, 2008</small>																			
Reg. Ent. Reference No. RN100802917																				
Media [Statute] Water Quality																				
Enf. Coordinator Jorge Ibarra, P.E.																				
Violation Number <input type="text" value="2"/>																				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 321.44(a) and Tex. Water Code § 26.039(b)"/>																			
Violation Description	<input type="text" value="Failed to notify the TCEQ orally within 24 hours of a discharge that occurred on July 10, 2008 and in writing within 14 working days of the discharge. Specifically, the report was submitted to the TCEQ on July 30, 2008."/>																			
Base Penalty	<input type="text" value="\$10,000"/>																			
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td>Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Harm																			
Release	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
>> Programmatic Matrix																				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td><input type="text"/></td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input type="text" value="10%"/></td> </tr> </table>		Falsification	Major	Moderate	Minor			<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>							
	Falsification	Major	Moderate	Minor																
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>															
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>																			
Adjustment	<input type="text" value="\$9,000"/>																			
<input type="text" value="\$1,000"/>																				
Violation Events																				
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="20"/> Number of violation days																		
<small>mark only one with an x</small>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	Violation Base Penalty <input type="text" value="\$1,000"/>						
daily	<input type="text"/>																			
monthly	<input type="text"/>																			
quarterly	<input type="text"/>																			
semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	x																			
<input type="text" value="One single event is recommended."/>																				
Good Faith Efforts to Comply																				
	<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>																		
	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDRP/Settlement Offer</th> </tr> <tr> <td>Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table>		Before NOV	NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	x	(mark with x)							
	Before NOV	NOV to EDRP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	x	(mark with x)																		
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																			
Violation Subtotal <input type="text" value="\$1,000"/>																				
Economic Benefit (EB) for this violation																				
Statutory Limit Test																				
Estimated EB Amount	<input type="text" value="\$10"/>	Violation Final Penalty Total <input type="text" value="\$1,450"/>																		
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,450"/>																				

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 35934
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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	11-Jul-2008	1-Jul-2009	0.97	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to properly notify the TCEQ orally within 24 hours of any discharges from animal feeding operations. Date Required is the date the oral notification was due. Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$10

Screening Date 12-Aug-2008	Docket No. 2008-0854-AGR-E	PCW																											
Respondent George Ted Devries dba Devries Dairy	<small>Policy Revision 2 (September 2002)</small>																												
Case ID No. 35934	<small>PCW Revision June 12, 2008</small>																												
Reg. Ent. Reference No. RN100802917																													
Media [Statute] Water Quality																													
Enf. Coordinator Jorge Ibarra, P.E.																													
Violation Number	3																												
Rule Cite(s)	30 Tex. Admin. Code § 321.44(b)																												
Violation Description	Failed to collect samples from a discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge. Specifically, samples were not taken of the discharge until July 11, 2008.																												
Base Penalty		\$10,000																											
>> Environmental, Property and Human Health Matrix																													
OR	Release	Harm																											
		Major Moderate Minor																											
	Actual	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td></td><td style="text-align: center;">x</td><td></td></tr></table>					x																						
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	Potential	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td></td><td></td><td></td></tr></table>							Percent 10%																				
>> Programmatic Matrix																													
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Matrix Notes	Failure to collect samples from the discharge within the required time frames could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.																												
Adjustment				\$9,000																									
				\$1,000																									
Violation Events																													
Number of Violation Events		1	Number of violation days																										
		1																											
<small>mark only one with an x</small>	daily	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td></td><td></td><td></td></tr></table>																											
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	x																												
One single event is recommended.																													
Good Faith Efforts to Comply		0.0% Reduction	\$0																										
		Before NOV NOV to EDPRP/Settlement Offer																											
Extraordinary	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td></td><td></td><td></td></tr></table>																												
Ordinary	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td></td><td></td><td></td></tr></table>																												
N/A	x	(mark with x)																											
Notes	The Respondent does not meet the good faith criteria for this violation.																												
Violation Subtotal				\$1,000																									
Economic Benefit (EB) for this violation		Statutory Limit Test																											
Estimated EB Amount		\$10	Violation Final Penalty Total \$1,450																										
This violation Final Assessed Penalty (adjusted for limits)				\$1,450																									

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 35934
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$200	10-Jul-2008	1-Jul-2009	0.98	\$10	n/a	\$10
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to collect samples from the discharge. Date Required is the date of the discharge. Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$200	TOTAL	\$10
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN601128895 DEVRIES, GEORGE TED	Classification: AVERAGE	Rating: 0.25
Regulated Entity:	RN100802917 DEVRIES DAIRY	Classification: AVERAGE	Site Rating: 0.25
ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0065E
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EF0052N
	WASTEWATER AGRICULTURE	PERMIT	WQ0003061000
	WASTEWATER AGRICULTURE	PERMIT	TX0122866
	PETROLEUM STORAGE TANK	REGISTRATION	77983
	REGISTRATION		
Location:	APPROX 4 MILES SW OF THE CITY OF STEPHENVILLE & 6.5 MILES NE OF THE CITY OF DUBLIN IN ERATH COUNTY		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 26, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 12, 2003 to August 12, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890

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)? _____
5. When did the change(s) in ownership occur? N/A
6. Rating Date: 9/1/2007 Repeat Violator: NO

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: 12/20/2007 | ADMINORDER 2007-0849-AGR-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 321, SubChapter B 321.36(c) | |
| 30 TAC Chapter 321, SubChapter B 321.40(1) | |
| Rqmt Prov: CAFO Individual Permit PERMIT | |
| Description: Failure to manage and maintain control facilities to retain all contaminated rainfall runoff from open lots & associated areas. | |
| Classification: Major | |
| Citation: 30 TAC Chapter 321, SubChapter B 321.42(p) | |
| 30 TAC Chapter 321, SubChapter B 321.49(i) | |
| Rqmt Prov: CAFO individual permit PERMIT | |
| Description: Failure to show a reduction in the phosphorus concentration in Zone 1 depth on LMUs where a NUP with a phosphorus reduction component was implemented 12 months or more prior to the current soil sample results. | |
| Effective Date: 04/03/2008 | ADMINORDER 2007-1572-AGR-E |
| Classification: Major | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) | |
| 30 TAC Chapter 321, SubChapter B 321.31(a) | |
| Description: Failure to prevent discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to waters in the state, 321.31(a). | |
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A

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

1 11/05/2003 (251620)
2 07/13/2005 (349614)
3 07/28/2005 (401691)
4 05/26/2006 (463026)
5 05/14/2007 (554654)
6 02/11/2008 (617909)
7 05/20/2008 (653761)
8 08/07/2008 (687724)

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

Date: 05/26/2006 (463026) CN601128895
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) Classification: Minor
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)
Description: Failure to maintain wastewater transfer pipes.
Date: 10/11/2007 (597634) Classification: Moderate
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.33(p)
Description: Failure to obtain an amendment under §321.34 or §321.35 of this title prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination.

F. Environmental audits.

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. 2008-0854-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 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a concentrated animal feeding operation ("CAFO") located approximately four miles southwest of the City of Stephenville and 6.5 miles northeast of the City of Dublin in Erath County, Texas (the "Facility").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 11, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"); nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Three Hundred Fifty Dollars (\$4,350) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Four Hundred Eighty Dollars (\$3,480)

of the administrative penalty and Eight Hundred Seventy Dollars (\$870) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Completed the excavation of the site where the break occurred and replaced the irrigation pipe by July 25, 2008;
 - b. Submitted a report to the TCEQ of the discharge that occurred on July 10, 2008 on July 30, 2008: and
 - c. Collected samples from the discharge that occurred on July 10, 2008 on July 11, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to prevent a discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to the water in the state, in violation of 30 TEX. ADMIN. CODE § 321.31(a), Permit No. 03061, Special Provision 6 and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on July 11, 2008. Specifically, due to a broken irrigation line that occurred on July 10, 2008, a discharge of wastewater was observed leaving the Facility and crossing under County Road 241.

2. Failed to notify the TCEQ orally within 24 hours of the discharge that occurred on July 10, 2008 and in writing within 14 working days of the discharge, in violation of 30 TEX. ADMIN. CODE § 321.44(a) and TEX. WATER CODE § 26.039(b), as documented during an investigation conducted on July 11, 2008. Specifically, the report was submitted to the TCEQ on July 30, 2008.
3. Failed to collect samples from the discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge, in violation of 30 TEX. ADMIN. CODE § 321.44(b), as documented during an investigation conducted on July 11, 2008. Specifically, samples were not taken of the discharge until July 11, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: George Ted Devries dba Devries Dairy, Docket No. 2008-0854-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 the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Development and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of unauthorized discharges from the Facility; and
 - ii. Update operational guidance and conduct employee training to ensure sampling of unauthorized discharges are conducted within the required time period and the reporting of unauthorized discharges to the TCEQ is properly accomplished.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the certification language described below:

"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
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This 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 the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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 Srdien

For the Executive Director

4/2/2009

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

3/6/09

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.