

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 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 May 4, 2009. No comments were received.</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.</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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

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

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
---	-------------------	---------

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
--------------------	-------------------	--------------------------------	---------

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.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
-------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
---	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
------------------	-------------------	-------------------	-----

Total EB Amounts \$68
 Approx. Cost of Compliance \$1,400
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,350
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$4,350
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,350
-----------------------------------	-------------------------------	---------

DEFERRAL	20.0% Reduction	Adjustment	-\$870
-----------------	-----------------	-------------------	--------

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
------------------------	---------

Screening Date 12-Aug-2008

Docket No. 2008-0854-AGR-E

PCW

Respondent George Ted Devries dba Devries Dairy

Policy Revision 2 (September 2002)

Case ID No. 35934

PCW Revision June 12, 2008

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 (number of NOV's 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)	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 (number of judgements 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)	1	-1%
	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%
<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)

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 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.

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			<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.			

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 321.31(a), Permit No. 03061, Special Provision 5 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	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				x
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					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 \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

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 Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
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 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.: 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 2					
Rule Cite(s)	30 Tex. Admin. Code § 321.44(a) and Tex. Water Code § 26.039(b)				
Violation Description	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		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major Moderate Minor			
	Actual	<input type="text"/>	Percent <input type="text" value="0%"/>		
	Potential	<input type="text"/>			
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.				
Adjustment					\$9,000
Violation Events					\$1,000
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="20"/>	
	<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	\$1,000
		monthly	<input type="text"/>		
		quarterly	<input type="text"/>		
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	x		
One single event is recommended.					
Good Faith Efforts to Comply			0.0% Reduction		\$0
		Before NOV	NOV to EDPRP/Settlement Offer		
	Extraordinary	<input type="text"/>	<input type="text"/>		
	Ordinary	<input type="text"/>	<input type="text"/>		
	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	<input type="text" value="\$10"/>	Violation Final Penalty Total	<input type="text" value="\$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. 2

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

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	Harm		
	Major	Moderate	Minor
Release			
Actual			
Potential		x	
	Percent		10%
>> Programmatic Matrix			
	Major	Moderate	Minor
Falsification			
	Percent		0%
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		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
	One single event is recommended.		
Good Faith Efforts to Comply			\$0
	0.0% Reduction		
	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary			
Ordinary			
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
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	\$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

D. The approval dates of investigations. (CCEDS 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). (CCEDS 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)

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)

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.

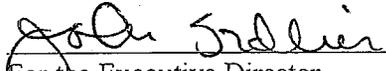
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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



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.



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.