

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2009-1249-AGR-E **TCEQ ID:** RN101512192 **CASE NO.:** 38088
RESPONDENT NAME: Franciscus Berdine Gerrits dba Gerrits 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: Gerrits Dairy, located on the east side of County Road 1475 one mile east of its intersection with State Highway 69, Wood County</p> <p>TYPE OF OPERATION: Concentrated animal feeding operation ("CAFO")</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 March 1, 2010. 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. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Frans Gerrits, Owner, Gerrits Dairy, 317 County Road 1475, Como, Texas 75431 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: May 4, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 27, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to design, construct, operate, and maintain retention control structures ("RCS") to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event. Specifically, contaminated runoff water from the stomped out fields was observed draining into the cooling ponds instead of into an RCS [General Permit No. TXG920496, Part III.A.6.(d)(ii) and 30 TEX. ADMIN. CODE § 321.37(d)].</p> <p>2) Failure to prevent the discharge of wastewater associated from the operation of a CAFO into or adjacent to water in the state. Specifically, a breach was observed on the north side of the RCS levee causing it to overflow into the cooling ponds and the contaminated water in the cooling ponds were overflowing and discharging from the dairy to property off site and one of the cooling ponds was discharging to a tributary to Dry Creek [General Permit No. TXG920496, Part II.A., 30 TEX. ADMIN. CODE § 321.31(a), and TEX. WATER CODE § 26.121].</p> <p>3) Failure to notify the Executive Director and appropriate regional office orally within 24 hours and in writing within 14 working days of the discharge from the RCS or any component of the waste handling or land application system.</p>	<p>Total Assessed: \$19,093</p> <p>Total Deferred: \$3,818 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$435 (remaining \$14,840 due in 35 monthly payments of \$424 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 15 days after the effective date of this Agreed Order:</p> <p>i. Develop and implement procedures to properly notify the TCEQ orally within 24 hours and in writing within 14 working days of any discharges from the Site; and</p> <p>ii. Properly dispose of the carcasses noted during the May 4, 2009 investigation.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of wastewater discharges from the cooling ponds;</p> <p>ii. Develop and implement measures to ensure that carcasses are collected within 24 hours of death and properly disposed of within three days of death;</p> <p>iii. Have the liner of the RCS evaluated by a Texas licensed professional engineer; and</p> <p>iv. Develop and implement measures to ensure that contaminated runoff water from the stomped out fields is properly contained and routed to an RCS.</p> <p>c. Within 45 days after the effective date of this Agreed Order, restore the rainfall capacity of the RCS;</p> <p>d. Within 60 days after the effective date of this Agreed Order, begin maintaining growth of crops, vegetation, or forage in pastures where cattle are being maintained; and</p> <p>e. Within 75 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</p>

<p>Specifically, a breach was observed on the north side of the RCS levee and no notification was submitted for the unauthorized discharge [General Permit No. TXG920496, Part IV.B.5. and 30 TEX. ADMIN. CODE § 321.44(a)].</p> <p>4) Failure to collect carcasses within 24 hours of death and properly dispose of within three days of death in accordance with the TEXAS WATER CODE Chapter 26, TEXAS HEALTH AND SAFETY CODE Chapter 361, and Chapter 335 unless otherwise provided for by the Commission. Specifically, multiple carcasses and bones were observed not being properly covered [General Permit No. TXG920496, Part III.A.10.(c) and 30 TEX. ADMIN. CODE § 321.36(1)].</p> <p>5) Failure to restore the rainfall capacity of the RCS after each accumulation of waste and/or wastewater that reduced such capacity. Specifically, the RCS was observed to be completely full [General Permit No. TXG920496, Part III.A.9.(a)(1) and 30 TEX. ADMIN. CODE § 321.39(b)(1)].</p> <p>6) Failure to have the RCS liner evaluated by a licensed Texas professional engineer within 30 working days following the discovery of the damage to the liner. Specifically, a breach was observed in the north side of the RCS levee and there was no documentation demonstrating that a liner evaluation by a licensed Texas professional engineer had been conducted [General Permit No. TXG920496, Part III.A.9.(b)(2) and 30 TEX. ADMIN. CODE § 321.39(b)(5)].</p> <p>7) Failure to maintain crops, vegetation, or forage growth in pastures where the cattle are being maintained. Specifically, a large portion of the dairy did not contain vegetation or forage growth [General Permit No. TXG920496, Part III.B.5. and 30 TEX. ADMIN. CODE § 321.39(g)(2)].</p>		Provisions a. through d.
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Additional ID No(s): Permit No. TXG920496



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES
 Assigned PCW: 3-Aug-2009
 Screening: 5-Aug-2009
 EPA Due:

RESPONDENT/FACILITY INFORMATION

Respondent: Franciscus Berdine Gerrits dba Gerrits Dairy
 Reg. Ent. Ref. No.: RN101512192
 Facility/Site Region: 5-Tyler
 Major/Minor Source: Minor

CASE INFORMATION

Enf./Case ID No.	38088	No. of Violations	6
Docket No.	2009-1249-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:

ADJUSTMENTS (1-7) TO SUBTOTAL 1

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

Compliance History 12.0% Enhancement Subtotals 2, 3, & 7:

Notes: The Respondent was issued two NOV's with the same/similar type of violations and one NOV without the same/similar type of violations.

Culpability No 0.0% Enhancement Subtotal 4:

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5:

Economic Benefit 0.0% Enhancement Subtotal 6:

Total EB Amounts: \$953
 Approx. Cost of Compliance: \$18,250
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal:

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.3% Adjustment:

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Upward adjustment to capture the avoided cost associated with violation No. 2.

Final Penalty Amount:

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty:

DEFERRAL 20.0% Reduction Adjustment:

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101512192

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 NOVs meeting criteria)	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (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)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 12%

>> 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 two NOVs with the same/similar type of violations and one NOV without the same/similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P. E.

Violation Number 1

Rule Cite(s) General Permit No. TXG920496, Part II.A. and Part III.A.6.(d)(ii), 30 Tex. Admin. Code §§ 321.31(a) and 321.37(d), and Tex. Water Code § 26.121

Violation Description

Failed to design, construct, operate, and maintain retention control structures ("RCS") to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event which resulted in the unauthorized discharge of wastewater to water in the state. Specifically, a breach was observed on the north side of the RCS levee causing it to overflow into the cooling ponds and the contaminated water in the cooling ponds were overflowing and discharging from the dairy to property off site and one of the cooling ponds was discharging to a tributary to Dry Creek and contaminated runoff water from the stomped out fields was observed draining into the cooling ponds instead of into an RCS.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 Number of violation days 93

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Four monthly events are recommended. The penalty was calculated from the investigation date, May 4, 2009, to the screening date, August 5, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$391

Violation Final Penalty Total \$11,231

This violation Final Assessed Penalty (adjusted for limits) \$11,231

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
Case ID No. 38088
Reg. Ent. Reference No. RN101512192
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description: 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	\$4,000	4-May-2009	1-Apr-2010	0.91	\$12	\$243	\$255
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)	\$3,000	4-May-2009	1-Apr-2010	0.91	\$136	n/a	\$136

Notes for DELAYED costs

Estimated cost to develop and implement measures to improve operations and/or maintenance practices to prevent the reoccurrence of wastewater discharges from the cooling ponds and to develop and implement measures to ensure that contaminated runoff water from the stomped out fields is properly contained and routed into an RCS and to prevent contaminated runoff into the cooling ponds. Date required is the investigation date and the final date is the expected compliance date.

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	\$7,000	TOTAL	\$391
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Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2004

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s)

General Permit No. TXG920496, Part IV.B.5. and 30 Tex. Admin. Code § 321.44(a)

Violation Description

Failed to notify the Executive Director and appropriate regional office orally within 24 hours and in writing within 14 working days of the discharge from the RCS or any component of the waste handling or land application system. Specifically, a breach was observed on the north side of the RCS levee and no notification was submitted for the unauthorized discharge.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to ED/PRP/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 \$81

Violation Final Penalty Total \$1,123

This violation Final Assessed Penalty (adjusted for limits) \$1,123

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
 Case ID No. 38088
 Reg. Ent. Reference No. RN101512192
 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
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	5-May-2009	1-Mar-2010	0.82	\$8	n/a	\$8

Notes for DELAYED costs: Estimated cost to develop and implement procedures to properly notify the TCEQ orally within 24 hours and in writing within 14 working days of any discharges from animal feeding operations. Date required is the date the oral notification was due and the final date is the expected compliance date.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$50	5-May-2009	5-Aug-2009	1.17	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED 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 and the final date is the screening date.

Approx. Cost of Compliance \$250 TOTAL \$81

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38068

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 3

Rule Cite(s)

General Permit No. TXG920496, Part III.A.10.(c) and 30 Tex. Admin. Code § 321.36(l)

Violation Description

Failed to collect carcasses within 24 hours of death and properly disposed of within three days of death in accordance with the Texas Water Code Chapter 26, Texas Health and Safety Code Chapter 361, and Chapter 335 unless otherwise provided for by the Commission. Specifically, multiple carcasses and bones were observed not being properly covered.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failure to collect carcasses within 24 hours of death and properly disposed of within three days of death resulted in the release of insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 93 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semifannual	
	annual	
single event		

Violation Base Penalty \$2,000

Two quarterly events are recommended. The penalty was calculated from the investigation date, May 4, 2009, to the screening date, August 5, 2009.

Good-Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$41

Violation Final Penalty Total \$2,248

This violation Final Assessed Penalty (adjusted for limits) \$2,248

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
 Case ID No. 38088
 Reg. Ent. Reference No. RN101512192
 Media Water Quality
 Violation No. 3

Percent Interest 5.0
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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	\$500	4-May-2009	1-Mar-2010	0.82	\$21	n/a	\$21
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	4-May-2009	1-Mar-2010	0.82	\$21	n/a	\$21

Notes for DELAYED costs: Estimated cost to properly dispose of the carcasses noted during the May 4, 2009 investigation and to develop and implement measures to ensure carcasses are collected within 24 hours of death and properly disposed of within three days of death. Date required is the investigation date and the final date is the expected compliance date.

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 \$41

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P E

Violation Number 4

Rule Cite(s)

General Permit No. TXG920496, Part III.A.9.(a)(1) and 30 Tex. Admin. Code § 321.39(b)(1)

Violation Description

Failed to restore the rainfall capacity of the RCS after each accumulation of waste and/or wastewater that reduced such capacity. Specifically, the RCS was observed to be completely full.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failure to restore the rainfall capacity of the RCS could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 93 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended. The penalty was calculated from the investigation date, May 4, 2009, to the screening date, August 5, 2009.

Good Faith Efforts to Comply

0.0% 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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$136

Violation Final Penalty Total \$2,246

This violation Final Assessed Penalty (adjusted for limits) \$2,246

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
 Case ID No. 38088
 Reg. Ent. Reference No. RN101512192
 Media Water Quality
 Violation No. 4

Percent Interest 5.0
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$3,000	4-May-2009	1-Apr-2010	0.91	\$136	n/a	\$136

Notes for DELAYED costs

Estimated cost to dewater and restore the RCS to storage capacity reserved for a 25 year rainfall event and to develop and implement measures to ensure that the RCS maintain the required capacity. Date required is the investigation date and the final date is the expected compliance date.

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

\$3,000

TOTAL

\$136

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 5

Rule Cite(s)

General Permit No. TXG920496, Part III.A.9.(b)(2) and 30 Tex. Admin. Code § 321.39(b)(5)

Violation Description

Failed to have the RCS liner evaluated by a licensed Texas professional engineer within 30 working days following the discovery of the damage to the liner. Specifically, a breach was observed in the north side of the RCS levee and there was no documentation demonstrating that a liner evaluation by a licensed Texas professional engineer had been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDP/PP/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 \$86

Violation Final Penalty Total \$1,123

This violation Final Assessed Penalty (adjusted for limits) \$1,123

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
 Case ID No. 38088
 Reg. Ent. Reference No. RN101512192
 Media Water Quality
 Violation No. 5

Percent Interest 5.0
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$2,000	4-May-2009	15-Mar-2010	0.88	\$88	n/a	\$88

Notes for DELAYED costs

Estimated cost to have the RCS liner evaluated by a licensed Texas professional engineer. Date required is the investigation date and the final date is the expected compliance date.

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

\$2,000

TOTAL

\$88

Screening Date 5-Aug-2009

Docket No. 2009-1249-AGR-E

PCW

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy

Policy Revision 2 (September 2002)

Case ID No. 38088

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101512192

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P. E.

Violation Number 6

Rule Cite(s)

General Permit No. TXG920496, Part III.B.5. and 30 Tex. Admin. Code § 321.39(g)(2)

Violation Description

Failed to maintain crops, vegetation, or forage growth in pastures where the cattle are being maintained. Specifically, a large portion of the dairy did not contain vegetation or forage growth.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to maintain crops, vegetation, or forage growth in pastures where the cattle are being maintained could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$237

Violation Final Penalty Total \$1,123

This violation Final Assessed Penalty (adjusted for limits) \$1,123

Economic Benefit Worksheet

Respondent Franciscus Berdine Gerrits dba Gerrits Dairy
Case ID No. 38088
Reg. Ent. Reference No. RM101512192
Media Water Quality
Violation No. 6

Percent Interest 5.0
Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$5,000	4-May-2009	15-Apr-2010	0.95	\$237	n/a	\$237

Notes for DELAYED costs
 Estimated cost to develop and implement procedures to ensure growth of crops, vegetation, or forage in pastures where the cattle is being maintained. Date required is the investigation date and the final date is the expected compliance date.

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 **\$5,000** **TOTAL** **\$237**

Compliance History Report

Customer/Respondent/Owner-Operator: CN602540288 GERRITS, FRANCISCUS BERDINE Classification: AVERAGE Rating: 0.50
Regulated Entity: RN101512192 GERRITS DAIRY Classification: AVERAGE Site Rating: 0.50
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920496
Location: ON THE EAST SIDE OF COUNTY ROAD 1475 ONE
MILE EAST OF ITS INTERSECTION WITH STATE
HIGHWAY 69 IN WOOD COUNTY
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: August 04, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 04, 2004 to August 04, 2009

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 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.

N/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. (CCEDS Inv. Track. No.)

1	07/08/2005	(398224)
2	08/12/2005	(404684)
3	07/11/2006	(481609)
4	05/31/2007	(562369)
5	07/31/2007	(565771)
6	10/08/2007	(595897)
7	11/12/2008	(707330)
8	01/21/2009	(723123)
9	07/27/2009	(748822)

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

Date: 07/11/2005 (398224) CN602540288
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125

Description: Failure to maintain extractable phosphorus levels below 200 ppm in zone 1 for a particular land management unit (LMU).

Date: 08/06/2007 (565771) CN602540288

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(b)(1)
TXG920496 Part III.A.9.(a)(1) PERMIT

Description: Failure to restore the rainfall capacity of the RCS after each accumulation of waste and/or wastewater that reduced such capacity.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.36(h)(2)
TXG920496 Part III.A.15(3)(i) PERMIT

Description: Failure to maintain weekly records of the RCS storage levels.

Date: 11/14/2008 (707330) CN602540288

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.37(d)
TXG920000 Part Part V.B. PERMIT

Description: Failure to design, construct, operate, and maintain retention control structures (RCSs) to contain all wastewater from the production area, including the runoff and direct precipitation from the 25-year, 24-hour rainfall event.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FRANCISCUS BERDINE GERRITS
DBA GERRITS DAIRY
RN101512192

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1249-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 Franciscus Berdine Gerrits dba Gerrits 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 on the east side of County Road 1475 one mile east of its intersection with State Highway 69 in Wood County, Texas (the "Site").
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 1, 2009.
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 Nineteen Thousand Ninety-Three Dollars (\$19,093) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Thirty-Five Dollars (\$435) of the administrative penalty

and Three Thousand Eight Hundred Eighteen Dollars (\$3,818) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fourteen Thousand Eight Hundred Forty Dollars (\$14,840) of the administrative penalty shall be payable in 35 monthly payments of Four Hundred Twenty-Four Dollars (\$424) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 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.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to design, construct, operate, and maintain retention control structures ("RCS") to contain all wastewater including the runoff and direct precipitation from the 25-year, 24-hour rainfall event, in violation of General Permit No. TXG920496, Part III.A.6.(d)(ii) and 30 TEX. ADMIN. CODE § 321.37(d), as documented during an investigation conducted on May 4, 2009. Specifically, contaminated runoff water from the stomped out fields was observed draining into the cooling ponds instead of into an RCS.

2. Failed to prevent the discharge of wastewater associated from the operation of a CAFO into or adjacent to water in the state, in violation of General Permit No. TXG920496, Part II.A., 30 TEX. ADMIN. CODE § 321.31(a), and TEX. WATER CODE § 26.121, as documented during an investigation conducted on May 4, 2009. Specifically, a breach was observed on the north side of the RCS levee causing it to overflow into the cooling ponds and the contaminated water in the cooling ponds were overflowing and discharging from the dairy to property off site and one of the cooling ponds was discharging to a tributary to Dry Creek.
3. Failed to notify the Executive Director and appropriate regional office orally within 24 hours and in writing within 14 working days of the discharge from the RCS or any component of the waste handling or land application system, in violation of General Permit No. TXG920496, Part IV.B.5. and 30 TEX. ADMIN. CODE § 321.44(a), as documented during an investigation conducted on May 4, 2009. Specifically, a breach was observed on the north side of the RCS levee and no notification was submitted for the unauthorized discharge.
4. Failed to collect carcasses within 24 hours of death and properly dispose of within three days of death in accordance with the TEXAS WATER CODE Chapter 26, TEXAS HEALTH AND SAFETY CODE Chapter 361, and Chapter 335 unless otherwise provided for by the Commission, in violation of General Permit No. TXG920496, Part III.A.10.(c) and 30 TEX. ADMIN. CODE § 321.36(l), as documented during an investigation conducted on May 4, 2009. Specifically, multiple carcasses and bones were observed not being properly covered.
5. Failed to restore the rainfall capacity of the RCS after each accumulation of waste and/or wastewater that reduced such capacity, in violation of General Permit No. TXG920496, Part III.A.9.(a)(1) and 30 TEX. ADMIN. CODE § 321.39(b)(1), as documented during an investigation conducted on May 4, 2009. Specifically, the RCS was observed to be completely full.
6. Failed to have the RCS liner evaluated by a licensed Texas professional engineer within 30 working days following the discovery of the damage to the liner, in violation of General Permit No. TXG920496, Part III.A.9.(b)(2) and 30 TEX. ADMIN. CODE § 321.39(b)(5), as documented during an investigation conducted on May 4, 2009. Specifically, a breach was observed in the north side of the RCS levee and there was no documentation demonstrating that a liner evaluation by a licensed Texas professional engineer had been conducted.
7. Failed to maintain crops, vegetation, or forage growth in pastures where the cattle are being maintained, in violation of General Permit No. TXG920496, Part III.B.5. and 30 TEX. ADMIN. CODE § 321.39(g)(2), as documented during an investigation conducted on May 4, 2009. Specifically, a large portion of the dairy did not contain vegetation or forage growth.

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: Franciscus Berdine Gerrits dba Gerrits Dairy, Docket No. 2009-1249-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 15 days after the effective date of this Agreed Order:
 - i. Develop and implement procedures to properly notify the TCEQ orally within 24 hours and in writing within 14 working days of any discharges from the Site; and
 - ii. Properly dispose of the carcasses noted during the May 4, 2009 investigation.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Develop and implement measures to improve design, operations, and/or maintenance practices to prevent the reoccurrence of wastewater discharges from the cooling ponds;
 - ii. Develop and implement measures to ensure that carcasses are collected within 24 hours of death and properly disposed of within three days of death;
 - iii. Have the liner of the RCS evaluated by a Texas licensed professional engineer, as required by General Permit No. TXG920496 and 30 TEX. ADMIN. CODE § 321.39(b); and
 - iv. Develop and implement measures to ensure that contaminated runoff water from the stomped out fields is properly contained and routed to an RCS.
 - c. Within 45 days after the effective date of this Agreed Order, restore the rainfall capacity of the RCS;
 - d. Within 60 days after the effective date of this Agreed Order, begin maintaining growth of crops, vegetation, or forage in pastures where cattle are being maintained; and
 - e. Within 75 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

"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 fines 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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 Site 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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 Bradley

For the Executive Director

2/24/2010
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.

J. Gerrits

Signature

12-02-09

Date

FRANCIS GERRITS

Name (Printed or typed)
Authorized Representative of
Franciscus Berdine Gerrits dba Gerrits 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.

