

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0033-AGR-E **TCEQ ID:** RN102743267 **CASE NO.:** 38953

**RESPONDENT NAME:** Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	

<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>

**SITE WHERE VIOLATION(S) OCCURRED:** Erath County Dairy Sales & Livestock Commission, located on the northwest side of United States ("U.S.") Highway 377, approximately three miles southwest of the intersection of U.S. Highway 377 and Farm-to Market Road 988, Stephenville, Erath County

**TYPE OF OPERATION:** Concentrated animal feeding operation and livestock auction barn

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on April 26, 2010. Comments were received on April 23, 2010 from Ms. Lauren Kalisek, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701, on behalf of the Bosque River Coalition.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

**Respondent:** Mr. Jimmy Beyer, President, ERATH COUNTY DAIRY SALES, INC., 8892 S. U.S. Highway 377, Suite G, Dublin, Texas 76446

**Respondent's Attorney:** Not represented by counsel on this enforcement matter

DOCKET NO.: 2010-0033-AGR-E

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 27, 2009</p> <p><b>Date of NOE Relating to this Case:</b> December 11, 2009</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failure to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million in Zone 1, unless the application is implemented in accordance with a detailed Nutrient Utilization Plan ("NUP"). Specifically, wastewater was applied to the Facility's land management unit without a NUP in place after analysis of samples collected in September 2009 showed 210 ppm of extractable phosphorus for Zone 1 [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0003211000, Pollution Prevention Plan Requirements No. A.8.(c)(2)].</p>	<p><b>Total Assessed:</b> \$1,010</p> <p><b>Total Deferred:</b> \$202  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$808</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that, by October 27, 2009, the Respondents submitted and received approval for a NUP.</p>

Additional ID No(s): WQ0003211000

# 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:** May 12, 2010

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

**From:**  Susan Johnson, Manager, Enforcement Division

**Subject:** Response to Comment Received Concerning Proposed Agreed Enforcement Order, Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC., Erath County RN102743267, Enforcement Case No. 38953, Docket No. 2010-0033-AGR-E

In response to a publication in the *Texas Register* on March 26, 2010, one comment has been received regarding a proposed agreed enforcement order requiring certain actions of Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC. The comment was received within the thirty-day public comment period.

The proposed order resolves a violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0003211000, Pollution Prevention Plan Requirements No. A.8.(c)(2) for failing to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million ("ppm") in Zone 1, unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"), as documented during an investigation conducted on October 27, 2009. Specifically, wastewater was applied to the Facility's land management unit without a NUP in place after analysis of samples collected in September 2009 showed 210 ppm of extractable phosphorus for Zone 1. The notice of enforcement was mailed to the Respondents on December 11, 2009. TCEQ staff and Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC. agreed on the terms of the proposed order on February 12, 2010. The order would assess a One Thousand Ten Dollar (\$1,010) penalty, of which Two Hundred Two Dollars, (\$202), 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 commenter is expressing concerns that the violation was improperly classified and should be reclassified so the Respondents are assessed a more appropriate penalty. Staff's position, as reflected in the response, is that the violation was classified appropriately. Accordingly, the Enforcement Division recommends that you adopt this proposed order.

### Attachments

cc: Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office  
Evette Alvarado, Coordinator, Enforcement Division  
Central Records, MC 213, Building E, 1st Floor, IWD/WQ0003211000/CO  
Enforcement Division Reader File





816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532

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

**TELECOPIER COVER SHEET**

April 23, 2010

PLEASE DELIVER THE FOLLOWING PAGES:

---

**To:** Ms. Evette Alvarado  
**Firm:** Texas Commission on Environmental Quality  
**Telecopy No.:** (512) 239-2550

---

**Client No.:** 2402-04  
**From:** Lauren Kalisek

---

**No. of Pages:** 3 + cover sheet

**Documents Transmitted:** Comments on Proposed Agreed Order for Jimmy Gaylon Beyer and Erath County Dairy Sales, Inc.: Docket No.: 2010-003-AGR-E

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.

---

Lloyd Gosselink Rochelle & Townsend, P.C.





816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532  
[www.lglawfirm.com](http://www.lglawfirm.com)

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

April 23, 2010

Ms. Evette Alvarado  
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 Jimmy Gaylon Beyer and Erath County Dairy Sales, Inc.: Docket No.: 2010-0033-AGR-E (2402-04)

Dear Ms. Alvarado:

Please accept these written comments on behalf of the Bosque River Coalition (the "Coalition") concerning the above-referenced Proposed Agreed Order ("AO") for Jimmy Gaylon Beyer and Erath County Dairy Sales, Inc. (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 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:

#### **Availability of Proposed AO**

Notice of the proposed AO was included in the March 26, 2010 issue of the *Texas Register*, and the notice indicated that a copy of the proposed AO was available for public inspection at the TCEQ's Central Office, first floor of Building C. However, upon inquiry in person by a representative of this firm on April 7, 2010, the proposed AO was not available at



Ms. Evette Alvarado  
April 23, 2010  
Page 2

this location and was not provided upon further email and telephone inquiry made to the enforcement coordinator. The BRC respectfully requests that the TCEQ review its procedures for ensuring that its proposed AOs are available for public inspection as indicated in its notices in the *Texas Register* to ensure that the public has a full opportunity to review and comment on such enforcement matters.

### Calculation of Penalty

The AO contains one violation (the "Violation") for which the penalty in the AO has been assessed. The Violation concerns a failure to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million ("ppm") in Zone 1 of its land management unit ("LMU"), unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"). The requirement to implement a NUP once an LMU reaches 200 ppm lies at the very heart of the statutory framework regulating concentrated animal feeding operations in this "major sole source impairment zone."<sup>1</sup> This framework is established to address additional nutrient runoff to a watershed that fails to meet current Texas Surface Water Quality Standards for nutrients and is on the Commission's 303d List. To allow the Respondent to slide with a penalty of only \$808 for this type of violation completely undermines this framework because such a minimal penalty provides *no deterrence* for the Respondent or any other owners of CAFOs to comply with TCEQ regulations. It is cheaper to risk getting caught for a violation and pay a small penalty than to comply.

Furthermore, the Coalition asserts that the Violation was improperly classified and should be reclassified so that the Respondent is assessed a more appropriate penalty. The harm associated with the Violation is classified as an "actual release" causing "minor harm," meaning that the violation resulted in the release of "insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors."<sup>2</sup> The Violation should be considered at least "moderate harm" based upon the exceedance of 200 ppm of extractable phosphorus. As recognized by the statute implementing NUP requirements, when soil levels reach 200 ppm of extractable phosphorus, the phosphorus in the field begins to leave the soil in rainfall runoff and leach into groundwater—thereby causing eutrophication, or excessive growth of algae, in the watershed.<sup>3</sup> In the case of the Respondent, this eutrophication would affect a watershed already impaired by phosphorus loading from CAFOs, the Bosque River.<sup>4</sup> Given the concentration of phosphorus and the impacts such concentrations have, the Violation should at least be considered "moderate harm" with a twenty-five percent (25%) adjustment of the penalty because the Violation resulted in the release of "significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors."<sup>5</sup>

<sup>1</sup> Tex. Water Code Ann. § 26.502; .504(d) (Vernon 2008 & Supp. 2009).

<sup>2</sup> TCEQ, *Penalty Policy of the Texas Commission on Environmental Quality* pg. 6, RG-253, September 2002.

<sup>3</sup> Natural Resources Conservation Service, *The Phosphorus Index: A Phosphorus Assessment Tool*, August 1994, available online at: <http://www.nrcs.usda.gov/technical/ecs/nutrient/pindex.html>.

<sup>4</sup> See TCEQ, *Implementation Plan for Soluble Reactive Phosphorus in the North Bosque River Watershed*, December 2002.

<sup>5</sup> TCEQ, *supra* note 1, at 6.



Ms. Evette Alvarado  
April 23, 2010  
Page 3

Based upon the percentage adjustment increase for the Violation for the magnitude of harm, the Coalition contends that the appropriate penalty that the Respondent should be assessed is at least \$2,020.

The Bosque River Coalition hereby requests that the Executive Director consider these comments in evaluating the proposed Agreed Order for the Jimmy Gaylon Beyer and Erath County Dairy Sales, Inc. 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

LJK:mab  
1105265\_2



Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.C., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 11, 2010

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

Re: Comment Received, Proposed Agreed Enforcement Order  
Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC.  
RN102743267; Docket No. 2010-0033-AGR-E; Enforcement Case No. 38953

Dear Ms. Kalisek:

On April 23, 2010, we received your letter on behalf of the Bosque River Coalition concerning the proposed agreed enforcement order for Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC. (the "Respondents") concentrated animal feeding operation ("CAFO") and livestock auction barn in Erath County, Texas. I have forwarded your letter to our General Counsel's Office so that the Commissioners can consider your comments regarding the proposed order.

Texas Commission on Environmental Quality (TCEQ) staff and the Respondents agreed on the terms of the proposed order on February 12, 2010. Accordingly, the Respondents were assessed an administrative penalty of One Thousand Ten Dollars (\$1,010), of which Two Hundred Two Dollars (\$202) has been deferred in accordance with our expedited order process. The Respondents have paid Eight Hundred Eight Dollars (\$808) of the administrative penalty. In addition to the penalty, the order recognizes that the Respondents submitted and received approval for a nutrient utilization plan by October 27, 2009.

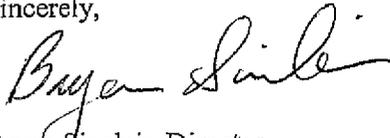
You indicate in your letter that you appreciate the TCEQ for the preparation of the agreed order and the opportunity to provide comments. You expressed some concerns about the availability of the agreed order. Thank you for bringing this to our attention. We will be reviewing our procedures regarding this issue to ensure that all Enforcement Division staff are able to respond to such requests in the future. You also indicate that the violation was improperly classified and should be reclassified to increase the penalty amount. The violation is categorized as an "actual release" with "minor harm" on the penalty calculation worksheet ("PCW") under the categories of harm matrix. You indicate in your letter that the violation should be categorized as an "actual release" with "moderate harm" because the violation resulted in the release of "significant amounts" of pollutants which did not exceed levels that are protective of human health or environmental receptors. In determining whether a violation resulted in the release of "insignificant" or "significant" amounts of pollutants, the documented impact to human health or the environment must be considered, as well as whether or not the release resulted in a loss of most or all of the quantity and/or quality of the affected resource. In this case, there is no documented evidence that the release resulted in a loss of quantity or quality of the affected resource. Additionally, no evidence of off-site runoff from or ponding or puddling within the LMU was observed at the time of the investigation. It is TCEQ's position that the

Ms. Lauren Kalisek  
Page 2

violation was properly categorized as an "actual release" with "minor harm" and the penalty amount is appropriate based on the penalty policy.

We appreciate your input into the enforcement action currently pending against the Respondents. Your name has been added to the mailing list to receive a copy of the final order, should the Commission adopt it. Ms. Evette Alvarado 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 Ms. Alvarado at 512-239-2573. For complaints related to the Respondents' current operating conditions or procedures, you should continue to contact our Dallas/Fort Worth Regional Office at 817-588-5800.

Sincerely,



Bryan Sinclair, Director  
Enforcement Division  
Texas Commission on Environmental Quality

BS/exa

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

Ms. Lauren Kalisek  
Page 3

bcc: Ms. Evette Alvarado, Coordinator, Enforcement Division, MC 169  
Central Records, MC 213, Building E, 1st Floor, IWD/WQ0003211000/CO  
Enforcement Division Reader File





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**  
**DATES**

Assigned	14-Dec-2009	Screening	18-Dec-2009	EPA Due	
PCW	6-Jan-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC.		
Reg. Ent. Ref. No.	RN102743267		
Facility/Site Region	4-Stephenville	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	38953	No. of Violations	1
Docket No.	2010-0033-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts	\$6	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 18-Dec-2009

Docket No. 2010-0033-AGR-E

PCW

Respondent Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALE

Policy Revision 2 (September 2002)

Case ID No. 38953

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102743267

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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%
<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) 26%

>> 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

Enhancement recommended due to three NOVs with unrelated violations and one Agreed Order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 26%

Screening Date 18-Dec-2009

Docket No. 2010-0033-AGR-E

PCW

Respondent Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC.

Policy Revision 2 (September 2002)

Case ID No. 38953

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102743267

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0003211000, Pollution Prevention Plan Requirements No. A.8.(c)(2)

Violation Description

Failed to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million ("ppm") in Zone 1, unless the application is implemented in accordance with a detailed nutrient utilization plan ("NUP"), as documented during an investigation conducted on October 27, 2009. Specifically, wastewater was applied to the Facility's land management unit without a NUP in place after analysis of samples collected in September 2009 showed 210 ppm of extractable phosphorus for Zone 1.

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

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 27

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the date wastewater was first applied (September 30, 2009) to the date compliance was achieved (October 27, 2009).

Good Faith Efforts to Comply

25.0% Reduction \$250

Before NOV NOV to EDRRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes The Respondents returned to compliance on October 27, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$1,010

This violation Final Assessed Penalty (adjusted for limits) \$1,010

## Economic Benefit Worksheet

**Respondent** Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC.

**Case ID No.** 38953

**Reg. Ent. Reference No.** RN102743267

**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)	\$1,500	30-Sep-2009	27-Oct-2009	0.07	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to develop and submit a NUP. Date required is the first date wastewater was applied without an approved NUP. Final date is the date the NUP was approved by the TCEQ.

**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

\$1,500

TOTAL

\$6



Description: Failure to maintain earthen pens to prevent ponding or puddling.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.40(3)  
 Description: Failure to maintain measures to prevent uncontaminated run-on water onto open lots during peak flows of the 25-year, 24-hour rainfall event.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.40(8)  
 Description: Failure of the waste handling, treatment, and management to be done in a manner to not create a nuisance condition or environmental or public health hazard.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)  
 Description: Failure to prevent trees from growing on the embankments of the retention basin.  
 Date: 10/03/2008 (703574)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(c)  
 Description: Failure of the PPP to be maintained on-site.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)  
 Description: Failure to maintain all ponds, pipes, ditches, pumps, and diversion & irrigation equipment. 321.39(f)(19)(F)

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

# Compliance History Report

Customer/Respondent/Owner-Operator: CN802718995 ERATH COUNTY DAIRY SALES, INC. Classification: AVERAGE Rating: 10.33  
 Regulated Entity: RN102743267 ERATH CO DAIRY SALES & LIVESTOCK COMMISSION Classification: AVERAGE Site Rating: 10.33  
 ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0003211000  
 Location: 8892 SOUTH HWY 377, STEPHENVILLE, TX, 76401  
 TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: January 04, 2010  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: January 04, 2005 to January 04, 2010

TCEQ Staff Member to Contact for Additional information Regarding this Compliance History

Name: Evette Alvarado Phone: 512-239-2573

## 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: 9/1/2009 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: 08/07/2005 ADMINORDER 2004-1610-AGR-E  
 Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.504(d)  
 30 TAC Chapter 321, SubChapter B 321.40(k)(2)  
 Description: Failure to obtain an approved nutrient utilization plan prior to irrigating wastewater onto a land management unit with phosphorus levels greater than 200ppm.
- 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 | 08/30/2006 | (485327) |
| 2 | 08/15/2007 | (567150) |
| 3 | 04/01/2008 | (638817) |
| 4 | 08/26/2008 | (700883) |
| 5 | 10/03/2008 | (703574) |
| 6 | 12/09/2009 | (780430) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 08/25/2006 (485327)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.40(11)  
 Description: Failure to properly dispose of dead animals within 3 days.
- Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)  
 Description: Failure to prevent trees on the embankments of the retention basin.
- Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(20)  
 Description: Failure to give written notification of completion within 5 days after the removal of solids from the lagoon.
- Date: 08/15/2007 (567150)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(24)(K)  
 Description: Failure to maintain earthen pens to prevent ponding or puddling.
- Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 321, SubChapter B 321.40(3)

Description: Failure to maintain measures to prevent unconfaminated run-on water onto open lots during peak flows of the 25-year, 24-hour rainfall event.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.40(6)  
Description: Failure of the waste handling, treatment, and management to be done in a manner to not create a nuisance condition or environmental or public health hazard.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)  
Description: Failure to prevent trees from growing on the embankments of the retention basin.  
Date: 10/03/2008 (703574)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(c)  
Description: Failure of the PPP to be maintained on-site.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)(F)  
Description: Failure to maintain all ponds, pipes, ditches, pumps, and diversion & irrigation equipment. 321.39(f)(18)(F)

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  
JIMMY GAYLON BEYER AND  
ERATH COUNTY DAIRY SALES,  
INC.  
RN102743267

§  
§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

RECEIVED  
MAY 11 2010  
OFFICE OF THE  
SECRETARY

AGREED ORDER  
DOCKET NO. 2010-0033-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 Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC. ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a concentrated animal feeding operation ("CAFO") and livestock auction barn located at 8892 South Highway 377, Stephenville, Erath County, Texas (the "Facility").
2. The Respondents have caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about December 16, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Ten Dollars (\$1,010) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Eight Hundred Eight Dollars (\$808) of the administrative penalty and Two Hundred Two Dollars (\$202) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents 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 Respondents 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, by October 27, 2009, the Respondents submitted and received approval for a Nutrient Utilization Plan ("NUP").
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 Respondents have 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 owners and operators of the Facility, the Respondents are alleged to have failed to cease land application of wastewater when sample results showed an extractable phosphorus level of greater than 200 parts per million ("ppm") in Zone 1, unless the application is implemented in accordance with a detailed NUP, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0003211000, Pollution Prevention Plan Requirements No. A.8.(c)(2), as documented during an investigation conducted on October 27, 2009. Specifically, wastewater was applied to the Facility's land management unit without a NUP in place after analysis of samples collected in September 2009 showed 210 ppm of extractable phosphorus for Zone 1.

## III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: Jimmy Gaylon Beyer and ERATH COUNTY DAIRY SALES, INC., Docket No. 2010-0033-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. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
5. 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.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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

[Signature]  
For the Executive Director

3/30/10  
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]  
Signature

2-12-10  
Date

Jim Beyer  
Name (Printed or typed)  
Authorized Representative of  
Jimmy Gaylon Beyer

President  
Title

[Signature]  
Signature

2-12-10  
Date

Jim Beyer  
Name (Printed or typed)  
Authorized Representative of  
ERATH COUNTY DAIRY SALES, INC.

President  
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.