

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0488-AGR-E **TCEQ ID:** RN100802917 **CASE NO.:** 37420

RESPONDENT NAME: George Ted Devries dba Devries Dairy

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Devries Dairy, located approximately four miles southwest of Stephenville and 6.5 miles northeast of Dublin, Erath 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: A complaint was received on November 2, 2007, alleging that wastewater was being applied to an unauthorized Land Management Unit. There is one additional pending enforcement action, Docket No. 2008-0854-AGR-E, regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 5, 2009. Comments were received by Ms. Lauren Kalisek on behalf of the Bosque River Coalition, 816 Congress Avenue, Suite 1900, Austin, Texas 78701.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. George Ted Devries, Owner, Devries Dairy, 1860 County Road 241, Dublin, Texas 76446 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: November 2, 2007</p> <p>Date of Investigations Relating to this Case: November 2, 2007 through April 22, 2008</p> <p>Date of NOV Relating to this Case: May 9, 2008 (NOE)</p> <p>Background Facts: These were record reviews.</p> <p>WATER</p> <p>1) Failure to obtain an amendment to Permit No. 03061 prior of making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination. Specifically, waste was being applied to unauthorized land management units ("LMUs") on November 2, 2007, December 6, 2007, and February 11, 2008 [30 TEX. ADMIN. CODE § 321.33(g)].</p> <p>2) Failure to construct and maintain waste control facilities so as to retain all contaminated rainfall runoff from open lots and associated areas and process generated wastewater. Specifically, three areas without runoff control facilities included: a containment area holding 500-700 cattle located approximately one mile northwest of the freestalls; a pen immediately south of the freestall contains cattle and no vegetation; and a feed lane and lockups approximately ¼ mile south southwest of the freestall had no vegetation and standing water was present [30 TEX. ADMIN. CODE § 305.125(1) and Permit No. 03061, Section VI, Special Provision No. 1].</p> <p>3) Failure to maintain at least 100 feet buffer zone between waste or wastewater application areas and surface water areas and watercourses. Specifically, waste was</p>	<p>Total Assessed: \$28,755</p> <p>Total Deferred: \$5,751 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$639 (Remaining \$22,365 due in 35 payments of \$639 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>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) Submitted an amendment application for Permit No. 03061 on April 19, 2007 and it was considered administratively complete on June 18, 2007;</p> <p>b) Cattle were removed from the three areas without runoff control facilities on May 23, 2008; and</p> <p>c) Submitted 2007 third quarter soil sample results to the TCEQ on May 28, 2008.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Immediately after the effective date of this Agreed Order:</p> <p>i. Begin maintaining no less than 100 feet buffer zone between waste or wastewater application areas and surface areas and watercourses;</p> <p>ii. Cease the land application of solids to the LMUs; and</p> <p>iii. Cease all land application of waste to unauthorized LMUs until proper authorization is obtained.</p> <p>b) Within 30 days after the effective date of this Agreed Order:</p> <p>i. Develop and implement procedures to ensure that waste application on all LMUs do not exceed the maximum allowable P205 application rates contained in the NMP; and</p> <p>ii. Test the water in the fresh water pond</p>

<p>being applied in LMU 2 and adjacent to a creek and to an area along a creek west of the Respondent's house. These areas are all inside the 100 feet buffer zone. In addition, evidence of a discharge was documented at the creek on March 12, 2008 [30 TEX. ADMIN. CODE § 321.40(7) and TEX. WATER CODE § 26.121(a)].</p> <p>4) Failure to operate in accordance with a comprehensive nutrient management plan ("CNMP"). Specifically, the CNMP does not allow the land application of solids. During the March 12, 2008 investigation it was documented that solids were being applied on LMU 1 and LMU2 [30 TEX. ADMIN. CODE § 321.39(f)(28)(G)].</p> <p>5) Failure to submit the 2007 third quarter soil sample results to the TCEQ Enforcement Division and Regional Offices [30 TEX. ADMIN. CODE § 305.125(1) and Permit No. 03061, Section VI, Special Provision No. 9].</p> <p>6) Failure to discontinue waste application on all LMU's before exceeding maximum allowable 205 parts per million of extractable phosphorus (reported as P) ("P205") application rates stated in the Nutrient Management Plan ("NMP"). Specifically, the NMP contained maximum annual allowable P205 application rates for LMU 1A at 82 pounds per acre ("lbs/ac") and LMU 3A at 41 lbs/ac. Application records indicate cumulative P205 applied to LMU 1A was 101.8 lbs/ac and to LMU 3A was 83.64 lbs/ac, and the Respondent continued to apply waste to the LMUs as documented on April 22, 2008 [30 TEX. ADMIN. CODE § 321.39(f)(28)(G)].</p>		<p>and begin remediating the structure if water quality is determined to be impaired.</p> <p>c) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b;</p> <p>d) Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application for Permit No. 03061 within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>e) Within 180 days after the effective date of this Agreed Order, submit written certification that either an amendment to Permit No. 03061 has been obtained or that operation has ceased until appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>
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Additional ID No(s): WQ0003061000

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: June 11, 2010

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

From: Susan Johnson, Manager, Enforcement Division

Subject: Response to Comment Received Concerning Proposed Agreed Enforcement Order, George Ted Devries dba Devries Dairy, Erath County
RN100802917, Enforcement Case No. 37420, Docket No. 2009-0488-AGR-E

In response to a publication in the *Texas Register* on September 4, 2009, one comment has been received regarding a proposed agreed enforcement order requiring certain actions of George Ted Devries dba Devries Dairy. The comment was received within the thirty-day public comment period.

The proposed order resolves violations of: 30 TEX. ADMIN. CODE § 321.33(g) for failing to obtain an amendment to Permit No. 03061 prior to making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination. Specifically, waste was being applied to unauthorized land management units ("LMUs") on November 2, 2007, December 6, 2007, and February 11, 2008; Permit No. 03061, Section VI, Special Provision No. 1 and 30 TEX. ADMIN. CODE § 305.125(1) for failing to construct and maintain waste control facilities so as to retain all contaminated rainfall runoff from open lots and associated areas and process generated wastewater. Specifically, three areas without runoff control facilities included: a containment area holding 500-700 cattle located approximately one mile northwest of the freestalls; a pen immediately south of the freestall contains cattle and no vegetation; and a feed lane and lockups approximately 1/4 mile south southwest of the freestall had no vegetation and standing water was present; 30 TEX. ADMIN. CODE § 321.40(7) and TEX. WATER CODE § 26.121(a) for failing to maintain at least 100 feet buffer zone between waste or wastewater application areas and surface water areas and watercourses. Specifically, waste was being applied in LMU 2 and adjacent to a creek and to an area along a creek west of Mr. Devries' house. These areas are all inside the 100 feet buffer zone. In addition, evidence of a discharge was documented at the creek on March 12, 2008; 30 TEX. ADMIN. CODE § 321.39(f)(28)(G) for failing to operate in accordance with a comprehensive nutrient management plan ("CNMP"). Specifically, the CNMP does not allow the land application of solids. During the March 12, 2008 investigation it was documented that solids were being applied on LMU 1 and LMU 2; Permit No. 03061, Section VI, Special Provision No. 9 and 30 TEX. ADMIN. CODE § 305.125(1) for failing to submit the 2007 third quarter soil sample results to both the TCEQ Enforcement Division and Regional Offices; and 30 TEX. ADMIN. CODE § 321.39(f)(28)(G) for failing to discontinue waste application on all LMUs before exceeding maximum allowable 205 parts per million of extractable phosphorus (reported as P) ("P205") application rates stated in the Nutrient Management Plan ("NMP"). Specifically, the NMP contained maximum annual allowable P205 application rates for LMU 1A at 82 pounds per acre ("lbs/ac") and LMU 3A at 41 lbs/ac. Application records indicate cumulative P205 applied to LMU 1A was 101.8 lbs/ac and to LMU 3A was 83.64 lbs/ac, and the Respondent continued to apply waste to the LMUs as documented on April 22, 2008. The violations were documented during investigations conducted between November 2, 2007 through April 22, 2008. TCEQ staff and George Ted Devries dba Devries Dairy agreed on the terms of the proposed order on July 27, 2009. The order would assess a Twenty-Eight Thousand Seven Hundred Fifty-Five Dollars (\$28,755) penalty, of which Five Thousand Seven Hundred Fifty-One Dollars (\$5,751) is deferred in accordance with the expedited order process.

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

Attachments: Commentor's Letter Dated October 2, 2009, Staff's Response Letter

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



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

October 2, 2009

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

VIA FACSIMILE
Fax Number: (512) 239-2550

Re: Comments on Proposed Agreed Order for George DeVries Dairy:
Docket No.: 2009-0488-AGR-E (2402-04)

Dear Mr. Ibarra:

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

WRITTEN COMMENTS

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

1. Classification of the Agreed Order

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

October 2, 2009
Mr. Jorge Ibarra
Page 2

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

As applied to the Respondent, a findings order should be used because of the applicability of the first, third and/or fourth criteria. The first criterion provides that a findings order is required when "[t]he violation is a gross deviation from a standard of conduct common in a given industry defined as...an indifference to a legal duty."⁴ The Respondent's actions associated with the AO, specifically Violation Number 1 ("Violation 1"), establish this "indifference to a legal duty" when the Respondent attempted to avoid TCEQ enforcement of Violation 1 for applying its wastewater to unauthorized fields.⁵ According to the TCEQ Investigation Report (the "Report") associated with the AO, the Respondent responded to the allegation by stating that it "no longer owned the property" upon which it was illegally applying wastewater.⁶ The Respondent's representative subsequently produced a warranty deed indicating that the Respondent, George DeVries, transferred ownership of the subject property to Dublin Ranch, LLC⁷—presumably so that the Respondent could claim its wastewater was being applied to a third-party field, instead of having to acknowledge that it was illegally applying wastewater to a field it controlled that was not an LMU under its existing permit. The Respondent's representative also stated that the Respondent no longer owned, operated or controlled the property.⁸ A cursory review of this warranty deed, however, shows that George DeVries and Dublin Ranch, LLC share identical mailing addresses.⁹ Records maintained with the Texas Secretary of State list George DeVries as the sole manager of, and registered agent for, Dublin Ranch, LLC.¹⁰ Those records are attached hereto as Attachment 1.

Indeed, the TCEQ Regional Office was also able to locate a copy of a lease agreement between George DeVries and Dublin Ranch, LLC by which Mr. DeVries retained operational control of the property in contravention of Section 321.42(j) of the TCEQ's rules regarding third-party fields. This artifice created and controlled exclusively by the Respondent was clearly an intentional attempt on the Respondent's part to establish the subject property as a third-party field and avoid potential enforcement liability for its illegal wastewater application. In fact, the actions by the Respondent more than likely constitute an offense under Section 7.149 of the Texas Water Code that sets forth that

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

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ TCEQ Investigation Report, DeVries, George Ted, CN601128895, Investigation# 600064 (the "Report").

⁶ Report, Investigation Comments.

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

⁸ TCEQ Complaint Report, DeVries Dairy, Incident No. 99632, Complaint Comments.

⁹ Report, Attachment B.

¹⁰ Records of the Texas Secretary of State for Dublin Ranch, LLC; see Attachment 1.

October 2, 2009
Mr. Jorge Ibarra
Page 3

[a] person commits an offense if the person intentionally or knowingly makes or causes to be made a false material statement, representation, or certification in, or omits or causes to be omitted material information from, an application, notice, record, report, plan or other document, including monitoring device data, filed or required to be maintained by Chapter 26 or by a rule adopted or a permit or an order issued by the appropriate regulatory agency under Chapter 26.¹¹

The false statements by the Respondent and the Respondent's representative that the Respondent did not own or control the property to which wastewater was illegally applied evidence a possible offense under Section 7.149. This offense is punishable with a penalty of up to \$100,000 and/or confinement not to exceed one year.¹² The Respondent's actions regarding Violation 1 evidence a gross deviation from a standard of conduct common in this industry given the Respondent's indifference to a legal duty by making false statements to purposefully try to circumvent the TCEQ rules.

The third criterion requires a findings order for three repeated enforcement actions over the prior five-year period for the same violation.¹³ In addition to the AO, the Respondent has two other agreed orders concerning an unauthorized discharge of wastewater—Agreed Order Docket No. 2007-1572-AGR-E and the enforcement action TCEQ Docket No. 2008-0854-AGR-E. The Findings Policy has no requirement that an agreed order be "final" in order to meet this third criterion—it just requires three repeated enforcement actions. Pursuant to the Findings Policy, TCEQ must use a findings order instead of 1660-styled order since the third criterion is met.

A findings order is also required under the fourth criterion. The fourth criterion provides that a findings order shall be required when in the judgment of the enforcement coordinator, investigator, legal staff, and appropriate managers the "respondent has demonstrated a pattern of disregard for environmental laws" *regardless of whether the specific violations at issue are the same violations*.¹⁴ No requirement for the fourth criterion exists in the Findings Policy that the "pattern" be for "repeat violations." The Finding Policy *only* requires a "pattern of disregard for environmental laws."¹⁵ The Respondent's history of noncompliance with environmental laws is a perfect example of such "pattern of disregard." The compliance history of the Respondent already includes two agreed orders and three written notice of violations ("NOVs") plus the enforcement action TCEQ Docket No. 2008-0854-AGR-E. The following are some of the violations noted in the TCEQ files concerning the Respondent since 2006. The occurrences marked with an asterisk have resulted in formal enforcement actions.

- April 18, 2006 - Failure to accurately represent management practices
- November 11, 2006 - Failure to maintain irrigation equipment

¹¹ TEX. WATER CODE § 7.149(a).

¹² TEX. WATER CODE § 7.149(b); *see* TEX. WATER CODE § 7.187(1)(C), (2)(D).

¹³ TCEQ, *supra* note 1.

¹⁴ *Id.* (emphasis added).

¹⁵ TCEQ, *supra* note 1.

October 2, 2009
Mr. Jorge Ibarra
Page 4

- March 22, 2007 - Failure to construct control facilities to contain contaminated runoff*
- March 22, 2007 - Failure to show a reduction in phosphorus concentration in LMUs*
- July 19, 2007 - Unauthorized discharge of wastewater*
- July 25, 2007 - Unauthorized discharge of wastewater*
- October 4, 2007 - Wastewater applied to unauthorized LMUs
- November 2, 2007 - Wastewater applied to unauthorized LMUs*
- December 6, 2007 - Wastewater applied to unauthorized LMUs*
- February 8, 2008 - Confined cattle with no runoff containment*
- February 11, 2008 - Solids applied to unauthorized LMUs*
- March 12, 2008 - Evidence of discharge in the creek*
- March 12, 2008 - Confined cattle with no runoff containment*
- March 12, 2008 - Applying solids to LMUs contrary to NMP/NUP*
- April 22, 2008 - Failure to implement current NMP/NUP*

This pattern of disregard for environmental laws is further evidenced by the false statements made by the Respondent regarding Violation 1 to avoid an enforcement action for illegally applying wastewater to fields. The Respondent has consistently shown its unwillingness to respect the spirit of TCEQ's rules. Consequently, due to the Respondent's clear pattern of disregard for environmental laws, the Coalition asserts that TCEQ staff should determine that the AO should be a findings order under which the Respondent is not allowed to generally deny the allegations set forth therein. Because the AO should be a findings order, the twenty percent (20%) reduction for deferral for expedited settlement is inapplicable and should not result in any reduction of the penalty.

2. Compliance History Worksheet

Under the Compliance History Worksheet for the AO, TCEQ only recognizes three NOV's and two agreed orders. This compliance history fails to consider the enforcement matter TCEQ Docket No. 2008-0854-AGR-E (the "2008 AO") concerning alleged violations occurring in July 2008. Although the 2008 AO is still pending, it would have been final if not for comments being submitted on May 4, 2009 and TCEQ's response to said comments by letter dated September 9, 2009. Almost certainly, the 2008 AO will be final by the time the AO goes before the Commission. Therefore, the penalty calculation does not accurately represent the Respondent's compliance history. Because the 2008 AO will be a final agreed order, the Compliance History Worksheet should include an additional twenty percent (20%) adjustment for this enforcement matter.

3. Calculation of Penalty

The AO contains six violations for which the penalty has been assessed. The Coalition asserts that Violation 1 and Violation Number 3 ("Violation 3") were improperly calculated and should be recomputed to reflect the appropriate penalty that should be assessed. Violation 1

October 2, 2009
 Mr. Jorge Ibarra
 Page 5

concerns a failure to obtain an amendment to Respondent's permit prior to making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination. More specifically, Violation 1 addresses the Respondent's illegal application of waste to unauthorized land management units ("LMUs") on November 2, 2007, December 6, 2007, and February 11, 2008. TCEQ identified Violation 1 as a Major violation under the Programmatic Matrix. In addition, TCEQ should have identified "Falsification" as applicable in the Programmatic Matrix given the false statements made by the Respondent and the Respondent's agent regarding Violation 1.

As a Major violation under the Programmatic Matrix, the TCEQ may consider "up to daily" number of violation events. The total number of violation days for Violation 1 was 201 days. Because TCEQ only considered this violation monthly, only seven (7) violation events were identified. Given that the Respondent probably illegally applied wastewater to unauthorized LMUs more than monthly, and at least on a weekly basis,¹⁶ the violation should be considered on a weekly basis, meaning twenty-nine (29) violation events (29 weeks).

Violation 3 addresses the Respondent's failure to maintain buffer zones that led to an unauthorized discharge on March 12, 2008. The harm associated with Violation 3 is classified as an "actual release" causing "moderate harm," meaning that the violation resulted in the release of "significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors."¹⁷ Violation 3 should be considered a "major harm" based upon the water quality analysis conducted for the unauthorized discharge. According to the water quality analysis included as Attachment F in the Report, the water quality results for the two samples collected by TCEQ—at the creek into where the unauthorized discharge occurred—indicated levels of water quality parameters within the same range or even more polluted than the results for a water quality analysis of raw sewage. The table below provides a comparison of the sample results to water quality data for raw domestic sewage.¹⁸

Constituent	Respondent Sample 1	Respondent Sample 2	Raw Domestic Sewage
Ammonia as N	Sample error	10.9 mg/L	10-30 mg/L
BOD, 5-Day	>134.2 mg/L	24 mg/L	~350 mg/L
CBOD, 5-Day	114 mg/L	13 mg/L	Not provided
COD	905 mg/L	Not tested	200-400 mg/L
Nitrate as N	6.76 mg/L	4.57 mg/L	0
Nitrite as N	1.41 mg/L	1.69 mg/L	Unknown
Orthophosphate as P	3.12 mg/L	8.10 mg/L	10 mg/L
pH	9.14 SU	8.32 SU	6.5-8.5 SU
Phosphorus, Total	9.97 mg/L	9.59 mg/L	10 mg/L
Specific Conductance	1790 umhos/cm	1400 umhos/cm	Unknown

¹⁶ See Report, Attachment G. The Wastewater Application table for LMU#1-A in Attachment G indicates wastewater application by the Respondent more frequently than a monthly basis, thereby supporting the determination that the number of violation events for illegal wastewater application should be considered as a weekly event. Furthermore, it is highly unlikely that TCEQ just happened to investigate the Respondent during the once a month illegal applications of wastewater on November 2, 2007, December 6, 2007, and February 11, 2008.

¹⁷ TCEQ, *Penalty Policy of the Texas Commission on Environmental Quality* pg. 6, RG-253, September 2002.

¹⁸ All of the information in the Table comes directly from Attachment F of the Report.

October 2, 2009
Mr. Jorge Ibarra
Page 6

Total Kjeldahl Nitrogen	45.5 mg/L	23.8 mg/L	35 mg/L
Total Organic Carbon	171 mg/L	119 mg/L	Not provided
TSS	1030 mg/L	77 mg/L	240 mg/L
Volatile Suspended Solids	222 mg/L	19 mg/L	180 mg/L

These levels of pollutants in the samples clearly exceed levels that are protective of human health and the environment given the similarity to that of raw domestic sewage, meaning that Violation 3 should be classified as a "major harm" with a fifty percent (50%) adjustment of the penalty.

In calculating the overall payable penalty, TCEQ determined that the Respondent did not meet the "Culpability Requirement." TCEQ should have concluded that the Respondent did in fact meet the culpability requirement because he could have "reasonably anticipated and avoided the violation" by complying with the regulations associated with Violation 1 to Violation 6, and further, by not intentionally and knowingly attempting to circumvent TCEQ rules by offering false statements regarding Violation 1. The Culpability Requirement should indicate an enhancement of the penalty by twenty-five percent (25%).

Based upon the percentage adjustment increases mandated by the Respondent's actual compliance history, the penalty increases required for Violations 1 and 3, and the penalty enhancement for culpability, the Coalition contends that the appropriate penalty that the Respondent should be assessed is \$162,660.

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

Sincerely,


Lauren Kalisek

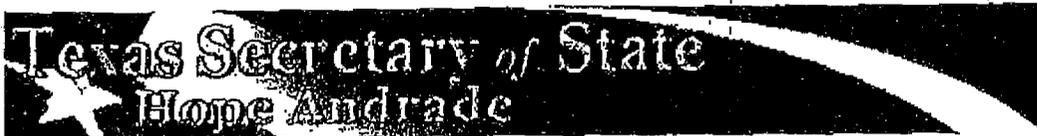
LJK:mab

Enclosures

Attachment 1

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Page 1 of 1



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800800430 **Entity Type:** Domestic Limited Liability Company (LLC)
Original Date of Filing: April 11, 2007 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 32029960039 **FEIN:**
Duration: Perpetual
Name: DUBLIN RANCH, LLC
Address: 1860 CR 241
 STEPHENVILLE, TX 76401 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Name	Address			Inactive Date	
George Devries	1860 CR 241 Stephenville, TX 76401 USA				

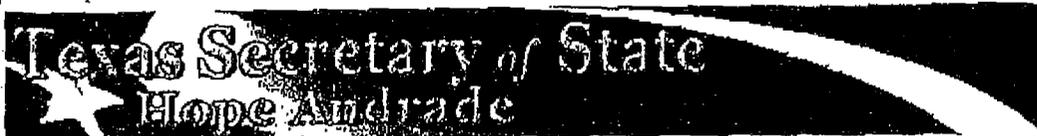
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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Page 1 of 1



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800800430 **Entity Type:** Domestic Limited Liability Company (LLC)

Original Date of Filing: April 11, 2007 **Entity Status:** In existence

Formation Date: N/A

Tax ID: 32029960039 **FEIN:**

Duration: Perpetual

Name: DUBLIN RANCH, LLC

Address: 1860 CR 241
STEPHENVILLE, TX 76401 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
View Document					Eff. Page
Image Number	Filing Type	Filing Date	Effective Date	Cond	Count
<input checked="" type="checkbox"/> 166687840002	Certificate of Formation	April 11, 2007	April 11, 2007	No	3

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Instructions:

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04/11/2007 14:47 2549654579

BOUCHER LAW OFFICE

PAGE 03/08

<p>Form 205 (Revised 01/06)</p> <p>Return in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709 Filing Fee: \$300</p>	<p style="text-align: right;">This space reserved for office use.</p> <div style="text-align: center;">  <p>Certificate of Formation Limited Liability Company</p> </div> <div style="text-align: right;"> <p>FILED In the Office of the Secretary of State of Texas APR 11 2007 Corporations Section</p> </div>
---	---



The filing entity being formed is a limited liability company. The name of the entity is:

DUBLIN RANCH, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.



A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

GEORGE		DEVRIES	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

1860 CR 241	Dublin	TX	76401
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>



A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.



IF INDIVIDUAL				
GEORGE		DEVRIES		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
1860 CR 241	Dublin	TX	USA	76401
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

04/11/2007 14:47 2549554579

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PAGE 04/09

NAME OF CONTROLLING PERSON				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS OF CONTROLLING PERSON				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

NAME OF PROVIDING PERSON				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS OF PROVIDING PERSON				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

Text Area: [The attached addendum, if any, is incorporated herein by reference.]



The name and address of the organizer:

JOHN C. BOUCHER

Name

PO Box 857

Stephenville

TX 76401

Street or Mailing Address

City

State Zip Code



- A. This document becomes effective when the document is filed by the secretary of state.
 - B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
 - C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:
- _____
- _____



The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 04/11/2007

John C. Boucher
Signature of organizer

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Page 1 of 1



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800800430 **Entity Type:** Domestic Limited Liability Company (LLC)

Original Date of Filing: April 11, 2007 **Entity Status:** In existence

Formation Date: N/A

Tax ID: 32029960039 **FEIN:**

Duration: Perpetual

Name: DUBLIN RANCH, LLC

Address: 1860 CR 241
STEPHENVILLE, TX 76401 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>	
		Name	Name Status	Name Type	Name Inactive Date	Consent Filing #
		DUBLIN RANCH, LLC	In use	Legal		0

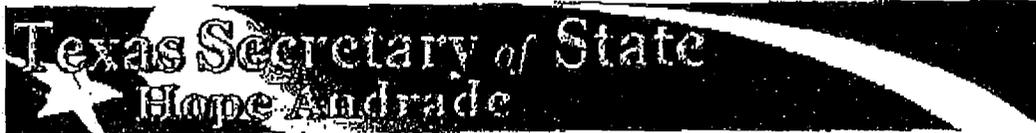
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Instructions:

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Page 1 of 1



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Last Update April 11, 2007	Name George Devries	Title Manager	Address 1860 CR 241 Stephenville, TX 76401 USA		

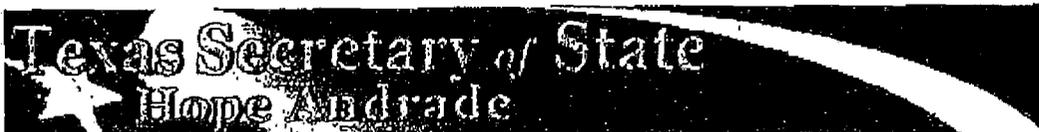
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Instructions:

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

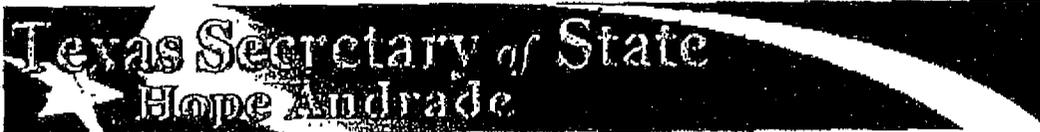
Filing Number: 800800430 **Entity Type:** Domestic Limited Liability Company (LLC)
Original Date of Filing: April 11, 2007 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 32029960039 **FEIN:**
Duration: Perpetual
Name: DUBLIN RANCH, LLC
Address: 1860 CR 241
 STEPHENVILLE, TX 76401 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>												
<table border="0"> <tr> <td>Assumed Name</td> <td>Date of Filing</td> <td>Expiration Date</td> <td>Inactive Date</td> <td>Name Status</td> <td>Counties</td> </tr> <tr> <td colspan="6">No names exist for this filing.</td> </tr> </table>						Assumed Name	Date of Filing	Expiration Date	Inactive Date	Name Status	Counties	No names exist for this filing.					
Assumed Name	Date of Filing	Expiration Date	Inactive Date	Name Status	Counties												
No names exist for this filing.																	

Instructions:
 ● To place an order for additional information about a filing press the 'Order' button.

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Page 1 of 1



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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800800430 **Entity Type:** Domestic Limited Liability Company (LLC)
Original Date of Filing: April 11, 2007 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 32029960039 **FEIN:**
Duration: Perpetual
Name: DUBLIN RANCH, LLC
Address: 1860 CR 241
 STEPHENVILLE, TX 76401 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Name	Entity Type	Document Description	Filing Date	Entity Filing Number	Jurisdiction Capacity
There are no documents listed for this entity which match your inquiry.					

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Taxable Entity Search Results

Franchise Tax Certification of Account Status

This Certification Not Sufficient for Filings with Secretary of State

Do **not** include a certificate from this Web site as part of a filing with the Secretary of State for dissolution, merger, withdrawal, or conversion. The Secretary of State will reject a filing that uses the certification from this site.

To obtain a certificate that is sufficient for dissolution, merger, or conversion, see Publication 98-336d, Requirements to Dissolve, Merge or Convert a Texas Entity.

Certification of Account Status	Officers And Directors Information
Entity Information:	DUBLIN RANCH LLC 1860 CR 241 STEPHENVILLE, TX 76401-
Status:	NOT IN GOOD STANDING
Registered Agent:	GEORGE DEVRIES 1860 CR 241 STEPHENVILLE, TX 76401
Registered Agent Resignation Date:	
State of Formation:	TX
File Number:	0800800430
SOS Registration Date:	April 11, 2007
Taxpayer Number:	32029960039

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Letter - Not in Good Standing

Page 1 of 1



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
AUSTIN, TEXAS 78774-0100

January 30, 2009

CERTIFICATE OF ACCOUNT STATUS

This is in response to your inquiry about the status of

DUBLIN RANCH LLC

This entity is not in good standing as it has not satisfied all franchise tax requirements.

If you need any additional information or assistance, please contact the Texas State Comptroller's field office in your area or call (800) 252-1181, toll free, nationwide. The Austin number is (512) 463-4600.

Taxpayer number: 32029960039
File number: 0800800430

Form 05-342 (Rev. 12-07/14)



Susan Combs Texas Comptroller of Public Accounts

Taxable Entity Search Results**Officers and Directors**
DUBLIN RANCH LLC[Return to: Taxable Entity Search Results](#)

Officer and director information on this site is obtained from the most recent Public Information Report (PIR) processed by the Secretary of State (SOS). PIRs filed with annual franchise tax reports are forwarded to the SOS. After processing, the SOS sends the Comptroller an electronic copy of the information, which is displayed on this web site. The information will be updated as changes are received from the SOS.

You may order a copy of a Public Information Report from open.records@cpa.state.tx.us or Comptroller of Public Accounts, Open Government Division, PO Box 13528, Austin, Texas 78711.

Title:	Name and Address:	Expiration/Resignation Date:
<i>MANAGER</i>	GEORGE DEVRIES 1860 CR 241 STEPHENVILLE, TX 76401	

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[Privacy and Security Policy](#) | [Accessibility Policy](#) | [Link Policy](#) | [Public Information Act](#) | [Compact with Texans](#)

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 11, 2010

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

Re: Comment Received from Bosque River Coalition
Regarding Proposed Agreed Enforcement Order
George Ted Devries dba Devries Dairy
RN100802917; Docket No. 2009-0488-AGR-E; Enforcement Case No. 37420

Dear Ms. Kalisek:

On October 2, 2009, we received your letter, sent on behalf of the Bosque River Coalition, concerning the proposed agreed enforcement order for George Ted Devries dba Devries Dairy ("the Respondent") in Erath, County, Texas. Your letter has been forwarded to our General Counsel's Office to be considered by the Commission when this case is taken up at Agenda. We would like to take this opportunity to respond to some of your comments.

CLASSIFICATION OF THE AGREED ORDER

You assert in your letter that a "findings order" format should have been used in the proposed settlement of this case based on your interpretation of the criteria established by the Texas Commission on Environmental Quality ("TCEQ") for use of the findings orders. You assert that the Respondent's actions regarding Violation No. 1 evidence a gross deviation from a standard of conduct common in the industry given the Respondent's indifference to legal duty by making false statements to purposely try to circumvent the TCEQ rules, thus, meeting Criteria 1 for use of a findings order. The TCEQ was previously made aware of the lease agreement between Dublin Ranch, LLC and the Respondent when the Respondent submitted an amendment application for Permit No. 03061. Therefore, no offense of TEXAS WATER CODE § 7.149 can be proven and Criteria No. 1 for using the findings order format has not been met.

Criteria No. 3 addresses the use of a findings order when there have been "three repeated enforcement actions over the prior five year period for the same violation". At the time that the current case was developed (May 19, 2008), neither the pending enforcement action, Docket No. 2009-0488-AGR-E, nor Docket No. 2008-0854-AGR-E (effective on March 31, 2009), were part of a Respondent's compliance history. Agreed Orders do not become part of a Respondent's compliance history until such Agreed Orders are approved and issued by the Commissioners. In addition, 30 TEX. ADMIN. CODE § 70.10(a) states, in part, that: "The executive director and the respondent may reach an agreement, or settlement, in an enforcement action such that an agreed order is recommended to the commission for approval and issuance. In order to have legal effect as an order of the commission, and in any case in which penalties are assessed, an agreed order must be approved and issued by the commission". Further, 30 TEX. ADMIN. CODE § 60.1(c)(1) provides that:

The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) **any final enforcement orders**, court judgments, consent decrees, and criminal convictions of the state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of the commission or the EPA. (emphasis added)

A compliance history evaluation is made at the time of case development. Enforcement case, Docket No. 2008-0854-AGR-E was not approved and issued prior to the development of the instance case, therefore, an adjustment in the compliance history for Docket No. 2008-0854-AGR-E is not justifiable. Only the two 1660-styled Agreed Orders and three written notice of violations (“NOVs”) were approved and issued during the five year compliance history period at the time of case development, which is accurately reflected in the current compliance history summary used in this case.

You also assert in your letter that the Respondent has a pattern of disregard for environmental laws. At the time of case development, the Respondent’s compliance history included two 1660-styled Agreed Orders and three written NOVs. The compliance history as evaluated at the time of case development and used in this case does not demonstrate a pattern of disregard for environmental laws. Therefore, the Respondent does not meet Criteria No. 4.

Per the Penalty Policy, if the Respondent is eligible for a 1660-styled Agreed Order and settles within the 60-day negotiation period, the Respondent is entitled to a 20% deferral for expedited settlement. As stated above, since this Respondent does not meet the findings order criteria and signed the 1660 agreed order within the 60-day negotiation period, the Respondent is entitled to this reduction.

CALCULATION OF PENALTY

Your letter asserts that Violation Nos. 1 and 3 on penalty calculation worksheet (“PCW”) for this case were improperly calculated.

Violation No. 1 is for failure to obtain an amendment to Permit No. 03061 prior to making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination. This violation is categorized as a “programmatic major” on the PCW. You accurately state that pursuant to the TCEQ Penalty Policy, TCEQ may consider the number of events “up to daily” for violations classified under this matrix. However, in order to apply the TCEQ Penalty Policy consistently with similar cases and circumstances, the TCEQ assesses monthly events for this type of violation. Additionally, there is no evidence in TCEQ files for which falsification can be proven for this violation. Therefore, the current penalty calculation for Violation No. 1 is consistent with both TCEQ’s Penalty Policy and other cases with similar violations.

Violation No. 3, concerning the failure to maintain buffer zones that led to an unauthorized discharge on March 12, 2008, is categorized as an “actual release” with a “moderate harm” on the PCW under the “Environmental, Property and Human Health” matrix. You assert that this violation should be classified as “actual release” with a “major harm”. In this case, there is no documented evidence of significant harm to

Ms. Lauren Kalisek
Page 3

human health, property, or the environment. Therefore, the penalty for this violation was accurately calculated pursuant to the TCEQ Penalty Policy.

Regarding the culpability requirement, you assert that "the Respondent could have reasonably anticipated and avoided the violation". TCEQ does not have sufficient evidence to support an allegation that the Respondent could have reasonably anticipated and avoided the violations included in this case. As such, the culpability enhancement is inapplicable to the penalty calculation.

TCEQ appreciates the input of the Bosque River Coalition regarding this pending enforcement matter. The Bosque River Coalition has been added to the mailing list to receive a copy of the final order issued by the Commissions in this matter. Mr. Jorge Ibarra, P.E., is the Enforcement Coordinator assigned to this case. If you have further concerns or comments related to the order, please do not hesitate to call Mr. Ibarra at (817) 588-5890. For complaints related to the Respondent's current operating conditions or procedures, you should continue to contact our Stephenville Regional Office at (254) 965-9200.

Sincerely,

for 

Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

BS/jai

cc: Mr. Sid Slocum, Manager, Water Section, Dallas/Fort Worth Regional Office, TCEQ

Mr. Lauren Kalisek
Page 4

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-May-2008	Screening	21-May-2008	EPA Due	
	PCW	22-May-2008				

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

CASE INFORMATION			
Enf./Case ID No.	37420	No. of Violations	6
Docket No.	2009-0488-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	\$19,500
---	-------------------	-----------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	49.0% Enhancement	Subtotals 2, 3, & 7	\$9,555
---------------------------	-------------------	--------------------------------	----------------

Notes: The Respondent was issued one NOV with the same/similar type of violations, two NOVs without the same/similar type of violations, two 1660 Agreed Orders containing denial of liability.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$300
--	-------------------	--------------

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

Total EB Amounts	\$555	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$28,755
-----------------------------	-----------------------	-----------------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$28,755
-----------------------------	-----------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$28,755
-----------------------------------	-------------------------------	-----------------

DEFERRAL	20.0% Reduction	Adjustment	-\$5,751
-----------------	-----------------	-------------------	-----------------

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$23,004
------------------------	-----------------

Screening Date 21-May-2008

Docket No. 2009-0488-AGR-E

PCW

Respondent: George Ted Devries dba Devries Dalry

Policy Revision 2 (September 2002)

Case ID No. 37420

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	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) 49%

>> 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 one NOV with the same/similar type of violations, two NOVs without the same/similar type of violations, two 1660 Agreed Orders containing denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 49%

Screening Date 21-May-2008 Docket No. 2009-0488-AGR-E PCW

Respondent George Ted Devries dba Devries Dairy Policy Revision 2 (September 2002)

Case ID No. 37420 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.33(g)

Violation Description Failed to obtain an amendment to Permit No. 03061 prior to making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination. Specifically, waste was being applied to unauthorized land management units ("LMUs") on November 2, 2007, December 6, 2007, and February 11, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> 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 7 Number of violation days 201

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

Violation Base Penalty \$7,000

Seven monthly events are recommended. The penalty was calculated from the investigation that began on November 2, 2007, to the screening date, May 21, 2008.

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 \$7,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$121 Violation Final Penalty Total \$10,430

This violation Final Assessed Penalty (adjusted for limits) \$10,430

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dalry
Case ID No.: 37420
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$1,000	2-Nov-2007	1-Apr-2010	2.41	\$121	n/a	\$121
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to submit the required permit amendment application and obtain authorization for the land management units. Date required is the first date of non-compliance 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	\$1,000	TOTAL	\$121
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Screening Date: 21-May-2008

Docket No.: 2009-0488-AGR-E

PCW

Respondent: George Ted Devries dba Devries Dalry

Policy Revision 2 (September 2002)

Case ID No.: 37420

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN100802917

Media [Statute]: Water Quality

Enf. Coordinator: Jorge Ibarra, P.E.

Violation Number: 2

Rule Cite(s): Permit No. 03061, Section VI, Special Provision No. 1 and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to construct and maintain waste control facilities so as to retain all contaminated rainfall runoff from open lots and associated areas and process generated wastewater. Specifically, three areas without runoff control facilities included: a containment area holding 500-700 cattle located approximately one mile northwest of the freestalls; a pen immediately south of the freestall contains cattle and no vegetation; and a feed lane and lockups approximately 1/4 mile south southwest of the freestall had no vegetation and standing water was present.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes: Failure to construct and maintain waste control facilities could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 2 Number of violation days: 100

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$2,000

Two quarterly events are recommended. The penalty was calculated from the investigation date, February 11, 2008, to the screening date, May 21, 2008.

Good Faith Efforts to Comply

10.0% Reduction

\$200

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

Notes: The Respondent achieved compliance on May 23, 2008 for this violation.

Violation Subtotal: \$1,800

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$70

Violation Final Penalty Total: \$2,780

This violation Final Assessed Penalty (adjusted for limits): \$2,780

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 37420
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	11-Feb-2008	23-May-2008	0.28	\$70	n/a	\$70

Notes for DELAYED costs

Estimated cost to remove the cattle from the uncontrolled areas and to construct and maintain waste control facilities. Date required is the investigation date and the final date is the 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

\$70

Screening Date: 21-May-2008

Docket No.: 2009-0488-AGR-E

PCW

Respondent: George Ted Devries dba Devries Dairy

Policy Revision 2 (September 2002)

Case ID No.: 37420

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN100802917

Media [Statute]: Water Quality

Enf. Coordinator: Jorge Ibarra, P.E.

Violation Number: 3

Rule Cite(s):

30 Tex. Admin. Code § 321.40(7) and Tex. Water Code § 26.121(a)

Violation Description:

Failed to maintain at least 100 feet buffer zone between waste or wastewater application areas and surface water areas and watercourses. Specifically, waste was being applied in LMU 2 and adjacent to a creek and to an area along a creek west of the Respondent's house. These areas are all inside the 100-foot buffer zone. In addition, evidence of a discharge was documented at the creek on March 12, 2008.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent: 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent: 0%

Matrix Notes:

Failure to maintain no less than 100-foot buffer zone between waste or wastewater application areas and surface areas and watercourses resulted in the release of significant amounts of pollutants.

Adjustment: \$7,500

\$2,500

Violation Events

Number of Violation Events: 3

70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty: \$7,500

Three monthly events are recommended. The penalty was calculated from the investigation date, March 12, 2008, to the screening date, May 21, 2008.

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: \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$86

Violation Final Penalty Total: \$11,175

This violation Final Assessed Penalty (adjusted for limits): \$11,175

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 37420
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	12-Mar-2008	1-Dec-2009	1.72	\$86	n/a	\$86

Notes for DELAYED costs

Estimated cost to implement procedures to maintain no less than 100 feet buffer zone between waste or wastewater application areas and surface areas and watercourses. 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

\$1,000

TOTAL

\$86

Screening Date 21-May-2008

Docket No. 2009-0488-AGR-E

PGW

Respondent George Ted Devries dba Devries Dairy

Policy Revision 2 (September 2002)

Case ID No. 37420

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 321.39(f)(28)(G)

Violation Description

Failed to operate in accordance with a comprehensive nutrient management plan ("CNMP"). Specifically, the CNMP does not allow the land application of solids. During the March 12, 2008 investigation it was documented that solids were being applied on LMU 1 and LMU 2.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to operate in accordance with a CNMP resulted in the release of insignificant amounts of pollutants.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

70 Number of violation days

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. The penalty was calculated from the investigation date, March 12, 2008, to the screening date, May 21, 2008.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EOPRP/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 \$1,490

This violation Final Assessed Penalty (adjusted for limits) \$1,490

Economic Benefit Worksheet

Respondent George Ted Devries dba Devries Dairy
Case ID No. 37420
Reg. Ent. Reference No. RN100802917
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	12-Mar-2008	1-Dec-2009	1.72	\$86	n/a	\$86

Notes for DELAYED costs

Estimated cost to develop procedures and conduct training to ensure the Facility is operating in accordance with the CNMP. 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

\$1,000

TOTAL

\$86

Screening Date: 21-May-2008

Docket No.: 2009-0488-AGR-E

PCW

Respondent: George Ted Devries dba Devries Dalry

Policy Revision 2 (September 2002)

Case ID No.: 37420

PCW Revision October 30, 2005

Reg. Ent. Reference No.: RN100802917

Media [Statute]: Water Quality

Enf. Coordinator: Jorge Ibarra, P.E.

Violation Number: 5

Rule Cite(s): Permit No. 03061, Section VI, Special Provision No. 9 and 30 Tex. Admin. Code § 305.125(1)

Violation Description: Failed to submit the 2007 third quarter soil sample results to both the TCEQ Enforcement Division and Regional Offices.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		X			10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 Number of violation days: 1

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty: \$1,000

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes

The Respondent achieved compliance on May 28, 2008 for this violation.

Violation Subtotal: \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$18

Violation Final Penalty Total: \$1,390

This violation Final Assessed Penalty (adjusted for limits): \$1,390

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 37420
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 5

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)	\$500	1-Oct-2007	28-May-2008	0.66	\$16	n/a	\$16

Notes for DELAYED costs

Estimated cost to submit the 2007 third quarter soil sample results. Date required is the date the report was due date and the final date is the 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

\$500

TOTAL

\$16

Screening Date: 21-May-2008

Docket No.: 2009-0488-AGR-E

PCW

Respondent: George Ted Devries dba Devries Dalry

Policy Revision 2 (September 2002)

Case ID No.: 37420

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN100802917

Media [Statute]: Water Quality

Enf. Coordinator: Jorge Ibarra, P.E.

Violation Number: 6

Rule Cite(s):

30 Tex. Admin. Code § 321.39(f)(28)(G)

Violation Description:

Failed to discontinue waste application on all LMUs before exceeding maximum allowable 205 parts per million of extractable phosphorus (reported as P) ("P205") application rates stated in the Nutrient Management Plan ("NMP"). Specifically, the NMP contained maximum annual allowable P205 application rates for LMU 1A at 82 pounds per acre ("lbs/ac") and LMU 3A at 41 lbs/ac. Application records indicate cumulative P205 applied to LMU 1A was 101.8 lbs/ac and to LMU 3A was 83.64 lbs/ac, and the Respondent continued to apply waste to the LMUs as documented on April 22, 2008.

Base Penalty: \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent: 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent: 0%

Matrix Notes

Failure to properly apply waste or wastewater resulted in the release of insignificant amounts of pollutants which did not exceed levels that are protective of human health or the environment.

Adjustment: \$9,000

\$1,000

Violation Events

Number of Violation Events: 1

29 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty: \$1,000

One quarterly event is recommended. The penalty was calculated from the investigation date, April 22, 2008, to the screening date, May 21, 2008.

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: \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$175

Violation Final Penalty Total: \$1,490

This violation Final Assessed Penalty (adjusted for limits): \$1,490

Economic Benefit Worksheet

Respondent: George Ted Devries dba Devries Dairy
Case ID No.: 37420
Reg. Ent. Reference No.: RN100802917
Media: Water Quality
Violation No.: 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	31-May-2006	1-Dec-2009	3.51	\$175	n/a	\$175

Notes for DELAYED costs

Estimated cost to properly apply waste or wastewater. Date required is the date the violation was first documented 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	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

\$1,000

TOTAL

\$175

Compliance History Report

Customer/Respondent/Owner-Operator: CN601128895 DEVRIES, GEORGE TED Classification: AVERAGE Rating: 23.33
 Regulated Entity: RN100802917 DEVRIES DAIRY Classification: AVERAGE Site Rating: 23.3

ID Number(s):
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER EF0065E
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER EF0052N
 WASTEWATER AGRICULTURE PERMIT WQ0003061000
 WASTEWATER AGRICULTURE PERMIT TX0122866
 PETROLEUM STORAGE TANK REGISTRATION 77983

Location: APPROX 4 MILES SW OF STEPHENVILLE & 6.5 MILES NE OF DUBLIN IN ERATH COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History: May 07, 2009

Agency Decision Requiring Compliance: Enforcement

Compliance Period: May 07, 2004 to May 07, 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.

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

operations into or adjacent to waters in the state, 321.31(a).

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

N/A

C. Chronic excessive emissions events.

N/A

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

1	07/13/2005	(349614)
2	07/28/2005	(401691)
3	05/26/2006	(463026)
4	05/14/2007	(554654)
5	02/11/2008	(617909)
6	05/20/2008	(653761)
7	08/07/2008	(687724)
8	10/03/2008	(703095)

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

Date: 05/26/2006 (463026)

CN601128895

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.41(a)(1)

Description: Failure to complete the required training.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(J)(i)

Description: Failure of the on-site application records include: date, location, number of acres utilized during each event, acreage of each crop, no. dry tons, % N, % moisture of manure & yield.

Date: 01/26/2007 (537537)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)

Description: Failure to maintain wastewater transfer pipes.

Date: 10/11/2007 (597634)

CN601128895

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(p)

Description: Failure to obtain an amendment under §321.34 or §321.35 of this title prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination.

F. Environmental audits.

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

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

AGREED ORDER DOCKET NO. 2009-0488-AGR-E

I. JURISDICTION AND STIPULATIONS

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

1. The Respondent owns and operates a concentrated animal feeding operation ("CAFO") located approximately four miles southwest of Stephenville and 6.5 miles northeast of Dublin in Erath County, Texas (the "Facility").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 14, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Eight Thousand Seven Hundred Fifty-Five Dollars (\$28,755) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Thirty-Nine Dollars (\$639) of the administrative penalty and Five Thousand Seven Hundred Fifty-One Dollars (\$5,751) 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 Twenty-Two Thousand Three Hundred Sixty-Five Dollars (\$22,365) of the administrative penalty shall be payable in 35 monthly payments of Six Hundred Thirty-Nine Dollars (\$639) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted an amendment application for Permit No. 03061 on April 19, 2007 and it was considered administratively complete on June 18, 2007;
 - b. Cattle were removed from the three areas without runoff control facilities on May 23, 2008; and
 - c. Submitted the 2007 third quarter soil sample results to the TCEQ on May 28, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to obtain an amendment to Permit No. 03061 prior of making any modification to the Facility which would cause a substantial change to the site plan or buffer distance determination, in violation of 30 TEX. ADMIN. CODE § 321.33(g), as documented during an investigation conducted from November 2, 2007 through April 22, 2008. Specifically, waste was being applied to unauthorized land management units ("LMUs") on November 2, 2007, December 6, 2007, and February 11, 2008.
2. Failed to construct and maintain waste control facilities so as to retain all contaminated rainfall runoff from open lots and associated areas and process generated wastewater, in violation of Permit No. 03061, Section VI, Special Provision No. 1 and 30 TEX. ADMIN. CODE § 305.125(1), as documented during an investigation conducted from November 2, 2007 through April 22, 2008. Specifically, three areas without runoff control facilities included: a containment area holding 500-700 cattle located approximately one mile northwest of the freestalls; a pen immediately south of the freestall contains cattle and no vegetation; and a feed lane and lockups approximately 1/4 mile south southwest of the freestall had no vegetation and standing water was present.
3. Failed to maintain at least 100 feet buffer zone between waste or wastewater application areas and surface water areas and watercourses, in violation of 30 TEX. ADMIN. CODE § 321.40(7) and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on March 12, 2008. Specifically, waste was being applied in LMU 2 and adjacent to a creek and to an area along a creek west of the Respondent's house. These areas are all inside the 100 feet buffer zone. In addition, evidence of a discharge was documented at the creek on March 12, 2008.
4. Failed to operate in accordance with a comprehensive nutrient management plan ("CNMP"), in violation of 30 TEX. ADMIN. CODE § 321.39(f)(28)(G), as documented during an investigation conducted from November 2, 2007 through April 22, 2008. Specifically, the CNMP does not allow the land application of solids. During the March 12, 2008 investigation it was documented that solids were being applied on LMU 1 and LMU 2.
5. Failed to submit the 2007 third quarter soil sample results to the TCEQ Enforcement Division and Regional Offices, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Permit No. 03061, Section VI, Special Provision No. 9, as documented during an investigation conducted from November 2, 2007 through April 22, 2008.
6. Failed to discontinue waste application on all LMUs before exceeding maximum allowable 205 parts per million of extractable phosphorus (reported as P) ("P205") application rates stated in the Nutrient Management Plan ("NMP"), in violation of 30 TEX. ADMIN. CODE § 321.39(f)(28)(G), as documented during an investigation conducted from November 2, 2007 through April 22, 2008. Specifically, the NMP contained maximum annual allowable P205 application rates for LMU 1A at 82 pounds per acre ("lbs/ac") and LMU 3A at 41 lbs/ac. Application records indicate cumulative P205 applied to LMU 1A was 101.8 lbs/ac and to LMU 3A was 83.64 lbs/ac, and the Respondent continued to apply waste to the LMUs as documented on April 22, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: George Ted Devries dba Devries Dairy, Docket No. 2009-0488-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. Immediately after the effective date of this Agreed Order:
 - i. Begin maintaining no less than 100 feet buffer zone between waste or wastewater application areas and surface areas and watercourses;
 - ii. Cease the land application of solids to the LMUs; and
 - iii. Cease all land application of waste to unauthorized LMUs until proper authorization is obtained.
 - b. Within 30 days after the effective date of this Agreed Order,
 - i. Develop and implement procedures to ensure that waste application on all LMUs do not exceed the maximum allowable P205 application rates contained in the NMP; and
 - ii. Test the water in the fresh water pond and begin remediating the structure if water quality is determined to be impaired.
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described in 2.e., and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b.;
 - d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit amendment application for Permit No. 03061 within 30 days after the date of such requests or by any other deadline specified in writing; and
 - e. Within 180 days after the effective date of this Agreed Order, submit written certification that either an amendment to Permit No. 03061 has been obtained or that operation has

ceased until appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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

Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan

10/3/2009
Date

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

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

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

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

George Devries

Signature

2/27/9

Date

George Devries

Name (Printed or typed)

Authorized Representative of

George Ted Devries dba Devries Dairy

Owner

Title

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

