

Investigation Information

Complaint Information: This facility has been investigated 25 times between November 2002 to March 25, 2011. Seven of those investigations were prompted by complaints, two of which resulted in no violations noted. The most frequent violation cited was for various forms of unpermitted discharges including discharges from broken irrigation equipment, irrigation on unpermitted property, and discharges from Retention Control Structure (“RCS”) overflows. Phosphorous levels above 200 parts per million (“ppm”) in the soils of the land management units (“LMU”) were also consistently noted. Unauthorized land application resulted in Agreed Order Docket No. 2009-0488-AGR-E, requiring Respondent to either cease applying waste to the land or amend his permit to allow him to land-apply.

TCEQ Small Business and Local Government Assistance group has contacted Respondent and offered to assist him in achieving compliance. Respondent informed SBLGA that the sludge from the RCS was removed in June 2010, however, the TCEQ Stephenville satellite office received no documentation demonstrating the sludge removal. Respondent also indicated that he was not interested in assistance from SBLGA.

Date(s) of Investigation: January 29, 2010

Date(s) of NOV(s): May 26, 2006; January 26, 2007; October 11, 2007

Date(s) of NOE(s): March 16, 2010

Violation Information

Failed to prevent an unauthorized discharge of wastewater from a CAFO into or adjacent to water in the state [30 TEX. ADMIN. CODE § 321.31(a); TEX. WATER CODE § 26.121(a)(1); and TCEQ Permit No. 03061, V. Conditions of the Permit]. Specifically, wastewater overflowed from an RCS through the overflow pipe into a freshwater pond on the property, then continued to a culvert under County Road 241, onto a neighboring property, then flowed into a culvert under County Road 385 into an unnamed creek.

Corrective Actions/Technical Requirements

Technical Requirements:

1. Immediately, cease all unauthorized discharges of wastewater.
2. Within 60 days:
 - a. Restore the required capacity of each RCS; and
 - b. Remove liquid, slurry waste, and sludge from the existing freshwater pond and utilize the liquid, slurry waste, and sludge in accordance with Natural Resources Conservation Service (“NRCS”) Code 633 Practice Standard or the certified Nutrient Management Plan prepared for the Facility, in accordance with the NRCS Code 590 Practice Standard.
3. Within 90 days, submit a closure plan for the existing freshwater pond developed using standards contained in the NRCS Practice Standard Code 360, as amended, and using the guidelines contained in the Texas Cooperative Extension/NRCS publication #B-6122, as amended.
4. Within 115 days, submit written certification demonstrating compliance with Technical Requirements Nos. 1 - 3.
5. Within 180 days, close the freshwater pond in accordance with the closure plan required by Technical Requirement No. 3.
6. Within 195 days, submit written certification demonstrating compliance with Technical Requirement No. 5.

Executive Summary – Enforcement Matter – Case No. 39426
George DeVries dba DeVries Dairy
RN100802917
Docket No. 2010-0508-AGR-E

Litigation Information

Date EDPRP Filed: July 29, 2010
Date Answer(s) Filed: August 9, 2010
SOAH Referral Date: September 20, 2010
Hearing Date(s):
Preliminary hearing: December 2, 2010 (waived November 29, 2010)
Evidentiary hearing: April 14, 2011 (remanded January 31, 2011, after receipt of signed Agreed Order on December 2, 2010.)

Additional Information:

December 1, 2010 Complainants file Motions to Intervene and Re-set the Preliminary Hearing.
December 2, 2010 Respondent signs Agreed Order.
January 7, 2010 Hearing held on Motion to Intervene; ALJ grants party status to A. Dwain Mayfield and the Bosque River Coalition.
January 12, 2011 Intervening parties file their comments to the December 2, 2010, Agreed Order.
January 13, 2011 ALJ remands the case and forwards the Agreed Order and comments to the TCEQ Chief Clerk.
June 3, 2011 Respondent files for ch. 7 bankruptcy. The bankruptcy 341 hearing was originally scheduled for June 30, 2011, but was re-scheduled for August 29, 2012. At the hearing, Respondent was found to have assets and the bankruptcy case was converted from ch. 7 to ch. 13.
Agreed Order and Intervener's comments published in the *Texas Register*.
July 1, 2011 ED raises the issue with Respondent's counsel of changes to the Agreed Order to include bankruptcy language.
ED is advised that Respondent is no longer represented by counsel.
October 3, 2011 Call to OAG Bankruptcy Division to request guidance on proceeding with the pending Agreed Order and changes required to address the bankruptcy.
November 16, 2011 OAG Bankruptcy Division provides ED with guidance on how to address the bankruptcy issue in the pending Agreed Order.
November 28, 2011 ED sends revised Agreed Order with bankruptcy language to Respondent.
February 14, 2012 EDFARP filed when Respondent does not respond to request to make the bankruptcy changes in the Agreed Order.
April 12, 2012 EDFARP referred to SOAH
May 30, 2012 Respondent's bankruptcy counsel relays Respondent's consent to the revised Agreed Order. ED files a motion to remand prior to the scheduled May 31, 2012, preliminary hearing.
Intervening parties indicate they would like to file revised comments in response to the revised Agreed Order.
June 22, 2012 Referred back to SOAH to schedule a Preliminary Hearing for the limited purpose of allowing the intervening parties to comment on the revised Agreed Order.

Executive Summary – Enforcement Matter – Case No. 39426
George DeVries dba DeVries Dairy
RN100802917
Docket No. 2010-0508-AGR-E

July 24, 2012 Signed revised Agreed Order received by the ED (mis-dated by Respondent as July 24, 2011)

July 27, 2012 Preliminary hearing held regarding Intervener's comments on the revised Agreed Order.

July 31, 2012 ALJ sends revised Agreed Order and revised comments to the TCEQ Chief Clerk for publication in the *Texas Register*.

October 5, 2012 Revised Agreed Order and Intervener's revised comments published in the *Texas Register*.

Contact Information

TCEQ Attorneys: Tammy L. Mitchell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Blas Coy, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Jennifer Graves, (956) 430-6023

TCEQ Regional Contact: Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5800

Respondent: George DeVries, 1860 County Road 241, Dublin, Texas 76446

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Mar-2010	Screening	25-Mar-2010	EPA Due	
	PCW	23-Jun-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	George DeVries dba DeVries Dairy		
Reg. Ent. Ref. No.	RN100802917		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39426	No. of Violations	1
Docket No.	2010-0508-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit	Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	66.0% Enhancement	Subtotals 2, 3, & 7	\$3,300
---------------------------	-------------------	--------------------------------	---------

Notes: The Respondent received three NOV's without same or similar violations and was issued three agreed orders with a 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	\$0
--	-------------------	-----

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

Total EB Amounts \$94
 Approx. Cost of Compliance \$1,800
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,300
-----------------------------	-----------------------	---------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

Final Penalty Amount	\$8,300
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,300
-----------------------------------	-------------------------------	---------

DEFERRAL	0.0%	Reduction	Adjustment	\$0
-----------------	------	-----------	-------------------	-----

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$8,300
------------------------	---------

Screening Date 25-Mar-2010

Docket No. 2010-0508-AGR-E

PCW

Respondent George DeVries dba DeVries Dairy

Policy Revision 2 (September 2002)

Case ID No. 39426

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100802917

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	3	60%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

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) 66%

>> 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 received three NOVs without same or similar violations and was issued three agreed orders with a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 66%

Screening Date 25-Mar-2010 **Docket No.** 2010-0508-AGR-E **PCW**
Respondent George DeVries dba DeVries Dairy *Policy Revision 2 (September 2002)*
Case ID No. 39426 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN100802917
Media [Statute] Water Quality
Enf. Coordinator Merrilee Hupp

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 321.31(a), Tex. Water Code § 26.121(a)(1), and TCEQ Permit No. 03061, V. Conditions of the Permit
Violation Description Failed to prevent an unauthorized discharge of wastewater from a confined animal feeding operation into or adjacent to water in the state, as documented during the investigation beginning January 29, 2010. Specifically, beginning on January 29, 2010, wastewater overflowed from a retention control structure ("RCS") through the overflow pipe in the RCS berm into a freshwater pond on the property. From the pond, the flow continued to a culvert under County Road 241, then entered a neighbor's property, and went into a culvert under County Road 385 to an unnamed creek .

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual		x	
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 55 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the beginning of the unauthorized discharge on January 29, 2010, to the March 25, 2010 screening date.

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 \$5,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$94 **Violation Final Penalty Total** \$8,300

This violation Final Assessed Penalty (adjusted for limits) \$8,300

Economic Benefit Worksheet

Respondent George DeVries dba DeVries Dairy
Case ID No. 39426
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	\$800	29-Jan-2010	30-Nov-2010	0.84	\$33	n/a	\$33
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	29-Jan-2010	15-Apr-2011	1.21	\$60	n/a	\$60

Notes for DELAYED costs Estimated cost to pump out the RCS to restore the required capacity and to close the freshwater pond contaminated by the unauthorized discharge. Date required is the date the unauthorized discharge began and the final date is when compliance is expected to be achieved.

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

\$1,800

TOTAL

\$94

Compliance History Report

Customer/Respondent/Owner-Operator: CN601128895 George DeVries Classification: AVERAGE Rating: 2.00
Regulated Entity: RN100802917 DEVRIES DAIRY Classification: AVERAGE Site Rating: 15.67
ID Number(s): WASTEWATER AGRICULTURE PERMIT WQ0003061000
WASTEWATER AGRICULTURE PERMIT TX0122866
PETROLEUM STORAGE TANK REGISTRATION 77983
Location: approx. 4 mi. SW of Stephenville and 6.5 mi. NE of Dublin in Erath County, Texas
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: March 18, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 18, 2005 to March 18, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee G Hupp Phone: 512 - 239 - 4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

A. Final Enforcement Orders, court judgments, 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: Moderate

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: Moderate

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/ wastewater from animal feeding operations into or adjacent to water in the state

Effective Date: 10/31/2009 ADMINORDER 2008-0854-AGR-E

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 321, SubChapter B 321.31(a)

Rqmt Prov: Special Provision 6 PERMIT

Description: Failed to prevent a discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to the water in the state. Specifically, due to a broken irrigation line that occurred on July 20, 2008, a discharge of wastewater was observed leaving the Facility and crossing under County Road 241.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.039(b)
30 TAC Chapter 321, SubChapter B 321.44(a)

Description: Failed to notify the TCEQ orally within 24 hours of the discharge that occurred on July 10, 2008 and in writing within 14 working days of the discharge. Specifically, the report was submitted to the TCEQ on July 30, 2008.

Classification: Major

Citation: 30 TAC Chapter 321, SubChapter B 321.44(b)

Description: Failed to collect samples from at discharge that occurred on July 10, 2008 within 30 minutes of the initial discharge. Specifically, samples were not taken of the discharge until July 11, 2008.

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)
- 9 11/23/2009 (783086)
- 10 02/22/2010 (787448)
- 11 03/15/2010 (795093)

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

Date: 05/26/2006 (463026) CN601128895

Self Report? NO Classification: Minor

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

Description: Failure to complete the required training.

Self Report? NO Classification: Minor

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

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

Date: 01/26/2007 (537537)

Self Report? NO Classification: Minor

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

Description: Failure to maintain wastewater transfer pipes.

Date: 10/11/2007 (597634)

Self Report? NO Classification: Moderate

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

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-0508-AGR-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding George DeVries DBA DeVries Dairy ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by James D. Bradbury of the law firm James D. Bradbury, PLLC, appear before the Commission and together stipulate that:

1. Respondent owns and operates a concentrated animal feeding operation located approximately four miles southwest of Stephenville and 6.5 miles northeast of Dublin, Erath County, Texas (the "Facility"). Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of eight thousand three hundred dollars (\$8,300.00) is assessed by the Commission in settlement of the violations alleged in Section II. On or about June 3, 2011, Respondent filed a voluntary Chapter 7 petition for bankruptcy relief pursuant to Title 11 United States Code (USC). This administrative proceeding is exempt from the automatic stay pursuant to 11 USC Section 362(b)(4). This assessed administrative penalty is a civil fine or penalty payable to a governmental unit and is not for pecuniary compensation. 11 USC

Section 523(a)(7) exempts from discharge such civil fines and penalties. Unless Debtor's bankruptcy case is dismissed, the TCEQ will not seek to execute upon the judgment for assessed civil fines and penalties unless it has first obtained a judicial determination that the debt is nondischargable. Upon obtaining such judicial determination, the TCEQ acknowledges it may not execute against any assets of the bankruptcy estate as contrasted with debtor's post petition assets.

- 6.
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 Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on January 29, 2010, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 321.31(a); TEX. WATER CODE § 26.121(a)(1); and TCEQ Permit No. 03061, V. Conditions of the Permit, by failing to prevent an unauthorized discharge of wastewater from a confined animal feeding operation into or adjacent to water in the state. Specifically, beginning on January 29, 2010, wastewater overflowed from a retention control structure ("RCS") through the overflow pipe in the RCS berm into a freshwater pond on the property. From the pond, the flow continued to a culvert under County Road 241, then entered a neighbor's property, and went into a culvert under County Road 385 to an unnamed creek.
2. Respondent received notice of the violation on or about March 21, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent be assessed an administrative penalty as set forth in Section I, Paragraph 5, above. The assessment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments may be made payable to "Texas Commission on Environmental Quality" and sent with the notation "Re: George DeVries DBA DeVries Dairy, Docket No. 2010-0508-AGR-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

2. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondent shall cease all unauthorized discharges of wastewater.
 - b. Within 60 days after the effective date of this Agreed Order, Respondent shall:
 - i. Restore the required capacity of each RCS at the Facility, in accordance with TCEQ Permit No. 03061, VI. Special Provisions No. 1, to prevent further unauthorized discharges; and
 - ii. Properly remove liquid, slurry waste, and sludge from the existing freshwater pond at the Facility and utilize the liquid, slurry waste, and sludge in accordance with Natural Resources Conservation Service ("NRCS") Code 633 Practice Standard or the certified Nutrient Management Plan prepared for the Facility, in accordance with the NRCS Code 590 Practice Standard.
 - c. Within 90 days after the effective date of this Agreed Order, Respondent shall submit a closure plan for the existing freshwater pond developed using standards contained in the NRCS Practice Standard Code 360, as amended, and using the guidelines contained in the Texas Cooperative Extension/NRCS publication #B-6122, as amended to:

Manager, Water Quality Assessment Section
Water Quality Division, MC 150
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - d. Within 115 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a., b., and c. The certification shall be notarized by a State of Texas Notary Public and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

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

- e. Within 180 days after the effective date of this Agreed Order, close the existing freshwater pond in accordance with the closure plan required by Ordering Provision No. 2.c.
 - f. Within 195 days after the effective date of this Agreed Order, submit certification language as described in Ordering Provision No 2.d. above, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrated compliance with Ordering Provision No. 2.e.
3. All relief not expressly granted in this Agreed Order is denied.
 4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
 5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

[Signature]
For the Executive Director

October 26, 2012
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of George DeVries DBA DeVries Dairy, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

George DeVries
Signature - George DeVries

7-24-11
Date