



# United States Department of the Interior

OPA 3750

APR 19 2004

BY Jue

## FISH AND WILDLIFE SERVICE

Ecological Services  
WinSystems Center Building  
711 Stadium Drive, Suite 252  
Arlington, Texas 76011

April 14, 2004

CHIEF CLERKS OFFICE

2004 APR 16 PM 2:45

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: U.S. Fish and Wildlife Service Comments Concerning Migratory Birds and Federally Listed Species on Proposed Texas Pollutants Discharge Elimination System (TPDES) Permit No. 03197

Dear Ms. Castañuela:

This responds to your Notice of Concentrated Animal Feeding Operation (CAFO) Application received by the U.S. Fish and Wildlife Service (Service) on March 22, 2004. The Hidden Valley Dairy has applied to the State of Texas to operate an existing CAFO under TPDES Permit No. 03197. This CAFO is located within the North Bosque River drainage area (Texas Brazos River Segment No. 1226) in Erath County, Texas. As stated in the permit, the maximum capacity for the CAFO is 850 head. Waste control structures employed by the facility consist of one pond and three retention control structures with approximate total capacities of 11.4, 34.2, 4.98 and 4.25 acre-feet, respectively. Wastewater and waste (i.e., manure) generated by the facility will be beneficially used on agricultural land located on-site.

The Service is concerned about the location of this CAFO, since a review of the records for Erath County indicates that the facility is located within the wintering range of the bald eagle (*Haliaeetus leucocephalus*), a federally listed threatened species. In addition, the facility is within the migratory range of the whooping crane (*Grus americana*), a federally listed endangered species.

In Texas, the preferred nesting habitat for the bald eagle is along river systems or within 1-2 miles of some large body of water. Nesting typically occurs from October to July. Clutch size varies from 1-3 eggs which are incubated for approximately 35 days. Young eagles generally fledge in April, after 10-12 weeks of growth, but parental care continues for another 4-6 weeks. Northern

migration begins in May. Wintering eagles may be observed on rivers, streams, reservoirs, and other areas of open water where fish, waterfowl, and/or carrion are available for food. Current threats to this species include, but are not limited to, habitat loss, human encroachment on nesting sites and lead poisoning.

The whooping crane spends the summer and breeding season in Canada then migrates to the Texas Gulf Coast to spend the winter months. Migration southward from Canada occurs from October through November while northward migration from the Texas Coast occurs from March through April. During migration, this species uses stopover areas in north Texas and the Texas Panhandle. Croplands are used for feeding and wetland areas are used for feeding and roosting. Current threats to this species include the destruction of wintering and breeding habitat, collisions with power lines and fences, shooting, specimen collecting and human disturbance.

Based on the location of the CAFO, the discharge of waste as a result of a storm event in excess of a 25-year, 24-hour event or through accidental releases which could result in adverse affects to these listed species appears to be unlikely. However, the Service recommends that as part of the permit conditions, the Texas Commission on Environmental Quality (TCEQ) include a condition that the permittee notify the Service immediately if an accidental release or storm event in excess of a 25-year, 24-hour event results in a discharge of waste or wastewater. The permittee will also initiate measures to assure that no federally listed species are affected as a result of this discharge. Discharges resulting in an adverse affect to a federally listed species (i.e., "take") could be in violation of Section 9 of the Endangered Species Act (ESA). Permittees responsible for discharges that result in the take of federally listed species could potentially be held liable for civil and/or criminal penalties as specified in Section 11 of the ESA.

In addition to the bald eagle and the whooping crane, the Service is concerned about the potential affects the waste management practices employed by the CAFO may have on other migratory avian species. Erath County is located in the Central Flyway, an area heavily used by migratory birds. During flight, migratory birds may not distinguish between retention structures and natural water bodies, and could be attracted to them to drink, rest, and perhaps feed on the algae and invertebrates that may be associated with the waters contained in these structures. This water may contain harmful trace elements, heavy metals, residual pesticides, and residual veterinary chemicals which could pose a health risk to migratory avian species and other wildlife. In addition, elevated levels of organic material, nitrogen compounds and anaerobic bottom sediments which may exist in the waste management units may favor proliferation of such disease causing vectors as avian botulism (*Clostridium botulinum*), avian cholera (*Pasteurella multocida*), Salmonella, Staphylococcus, and Streptococcus. For these reasons, the Service recommends that the TCEQ require this CAFO to develop a migratory bird monitoring program.

The monitoring program should include as a minimum, periodic visual monitoring activities, the maintenance of a log book for recording observations, and establishing contact with the Service's Arlington, Texas field office when detrimental affects to migratory birds are observed. This program may also be modified to include the establishment of a migratory bird exclusion system

by the CAFO to prevent the birds from using the retention structures as stop over areas in the event that detrimental affects are observed. The development of such an overall program could reduce the potential for the unauthorized taking of migratory birds attributed to waste management activities employed by the CAFO. The unauthorized taking of a migratory bird, unless and except as permitted by the Service, is prohibited and would be in violation of Section 703 of the Migratory Bird Treaty Act (MBTA). Permittees which are responsible for such takings could be held liable for criminal penalties as specified in Section 707 of the MBTA.

If the permittee has any questions or concerns about establishing a migratory bird monitoring program, the Service recommends that the TCEQ have the permittee contact Craig Giggelman or Jacob Lewis of the Arlington, Texas field office at (817) 277-1100. Thank you for the opportunity to comment on the proposed permit.

Sincerely,

A handwritten signature in cursive script that reads "Tom Cloud".

Thomas J. Cloud, Jr.  
Field Supervisor

