

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel

Thru: *MBC* Melissa Cordell, Assistant Deputy Director
Enforcement Division

From: *MP* Michael Parrish, Team Leader
Special Functions Team

Date: February 16, 2023

Subject: **Backup Revision**
February 22, 2023 Commission Agenda
Item No. 7 - Petrus Adrianus Boekhorst dba Petal Dairy
Docket No. 2019-0962-AGR-E

Enclosed please find the following:

Executive summary

- Page 3, Technical Requirements - Added subparts (a.i) and (a.ii) to Technical Requirement (a); revised Technical Requirement (e); and removed Technical Requirement (f).
- Page 3, Contact Information - Update Enforcement Coordinator.

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel
Melissa Schmidt, Public Interest Counsel
Gill Valls, Office of General Counsel
Katherine McKenzie, Agenda Coordinator, Litigation Division
Amy Settemeyer, Deputy Director, Enforcement Division
Melissa Cordell, Assistant Deputy Director, Enforcement Division
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division
Kristy Deaver, Manager, Water Section, Enforcement Division
Katy Montgomery, Team Leader, Water Section, Enforcement Division

**Executive Summary – Enforcement Matter – Case No. 57678
Petrus Adrianus Boekhorst dba Petal Dairy
RN101716298
Docket No. 2019-0962-AGR-E**

- b. Removed animals from the pasture to maintain crops, vegetation, forage growth or post-harvest residues in the pasture by March 2, 2020; and
- c. Properly buried the carcasses in the mortality management area by January 25, 2020.

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

i. Develop and implement procedures and conduct employee training to ensure the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event; and

ii. Submit an application for a permit amendment to include authorization for the RCS No. 6 and the second center pivot irrigation system through the State of Texas Environmental Electronic Reporting System.

b. Within 45 days, submit written certification of compliance with a.

c. Within 60 days:

i. Remove and properly dispose of the sludge and manure deposited in the tributary of Stouts Creek; and

ii. Provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for RCS Nos. 5 and 6.

d. Within 75 days, submit written certification of compliance with c.

e. Within 360 days, submit written certification that the permit was amended to include RCS No. 6 and the second center pivot.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Katy Montgomery, Enforcement Division, Enforcement Team 1, MC R-13, (210) 403-4016; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Petrus Adrianus Boekhorst, Owner, Petal Dairy, 336 County Road 3368, Saltillo, Texas 75478

Respondent's Attorney: N/A

Executive Summary – Enforcement Matter – Case No. 57678
Petrus Adrianus Boekhorst dba Petal Dairy
RN101716298
Docket No. 2019-0962-AGR-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

AGR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Petal Dairy, 336 County Road 3368, Saltillo, Hopkins County

Type of Operation:

Concentrated animal feeding operation

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 17, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$52,963

Total Paid to General Revenue: \$1,478

Total Due to General Revenue: \$51,485

Payment Plan: 35 payments of \$1,471 each

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 24, 2019 through February 7, 2019

Date(s) of NOE(s): April 5, 2019

Executive Summary – Enforcement Matter – Case No. 57678
Petrus Adrianus Boekhorst dba Petal Dairy
RN101716298
Docket No. 2019-0962-AGR-E

Violation Information

1. Failed to ensure that the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event and failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(b)(2), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004905000, Part VII, A.5(a)].
2. Failed to provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for each retention control structure ("RCS") [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.38(g)(2)(G) and TPDES Permit No. WQ0004905000, Part VII, A.3(a)(2)].
3. Failed to collect carcasses within 24 hours of death and properly dispose of them within three days of death [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(g)(3), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0004905000, Part VII, A.6(c)].
4. Failed to maintain crops, vegetation, forage growth or post-harvest residues in pastures containing animals and failed to take reasonable steps to prevent adverse affects to human health or safety, or to the environment [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(g)(2), and TPDES Permit No. WQ0004905000, Part VII, B.5 and B.7].
5. Failed to stabilize embankment walls to prevent erosion or deterioration [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.38(g)(1)(C) and TPDES Permit No. WQ0004905000, Part VII, A.3(f)(3)].
6. Failed to submit written notification to the TCEQ within 14 working days of a discharge into water in the state [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.44(a) and TPDES Permit No. WQ0004905000, Part VIII, B.3].
7. Failed to submit any relevant facts in a permit application [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0004905000, Part IX, Q].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. Stabilized the embankment of RCS No. 5 to prevent erosion and deterioration by February 8, 2019;

Executive Summary – Enforcement Matter – Case No. 57678
Petrus Adrianus Boekhorst dba Petal Dairy
RN101716298
Docket No. 2019-0962-AGR-E

- b. Removed animals from the pasture to maintain crops, vegetation, forage growth or post-harvest residues in the pasture by March 2, 2020; and
- c. Properly buried the carcasses in the mortality management area by January 25, 2020.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, develop and implement procedures and conduct employee training to ensure the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event.
- b. Within 45 days, submit written certification of compliance with a.
- c. Within 60 days:
 - i. Remove and properly dispose of the sludge and manure deposited in the tributary of Stouts Creek; and
 - ii. Provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for RCS Nos. 5 and 6.
- d. Within 75 days, submit written certification of compliance with c.
- e. Within 180 days, include authorization for the RCS No. 6 and the second center pivot irrigation system in the renewed permit.
- f. Within 195 days, submit written certification of compliance with e.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-5717; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Petrus Adrianus Boekhorst, Owner, Petal Dairy, 336 County Road 3368, Saltillo, Texas 75478

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	8-Apr-2019	Screening	18-Apr-2019	EPA Due	
	PCW	5-May-2021				

RESPONDENT/FACILITY INFORMATION			
Respondent	Petrus Adrianus Boekhorst dba Petal Dairy		
Reg. Ent. Ref. No.	RN101716298		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	57678	No. of Violations	7	
Docket No.	2019-0962-AGR-E	Order Type	Findings	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Steven Van Landingham	
		EC's Team	Enforcement Team 3	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$45,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	20.0% Adjustment	Subtotals 2, 3, & 7	\$9,000
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Notes	Enhancement for one agreed order containing a denial of liability.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,062
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,883	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$19,775	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$52,938
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$25
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 6.
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Final Penalty Amount	\$52,963
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$52,963
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$52,963
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Screening Date 18-Apr-2019

Docket No. 2019-0962-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 4 (April 2014)

Case ID No. 57678

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101716298

Media Water Quality

Enf. Coordinator Steven Van Lanningham

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments 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%
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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 20%

Screening Date 18-Apr-2019 **Docket No.** 2019-0962-AGR-E **PCW**
Respondent Petrus Adrianus Boekhorst dba Petal Dairy *Policy Revision 4 (April 2014)*
Case ID No. 57678 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN101716298
Media Water Quality
Enf. Coordinator Steven Van Landingham

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.39(b)(2), Tex. Water Code § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004905000, Part VII, A.5(a)

Violation Description
 Failed to ensure that the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event and failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state. Specifically, retention control structure ("RCS") No. 5 was observed overflowing from three locations and discharging agricultural waste, including sludge and manure, into a tributary to Stouts Creek. Samples collected in the discharge path indicate an increase in pollutants from upstream measurements, as shown in the attached Sample Result Table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	x			30.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes
 Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 3 84 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$22,500

Three monthly events are recommended from the January 24, 2019 investigation date to the April 18, 2019 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$22,500

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

Estimated EB Amount \$1,544 **Violation Final Penalty Total** \$27,013

This violation Final Assessed Penalty (adjusted for limits) \$27,013

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
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	Costs Saved	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	\$250	24-Jan-2019	29-Dec-2021	2.93	\$37	n/a	\$37
Remediation/Disposal	\$10,000	24-Jan-2019	28-Jan-2022	3.01	\$1,507	n/a	\$1,507
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement procedures and conduct employee training to ensure the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Estimated Remediation/Disposal cost to remove and properly dispose of the sludge and manure deposited in the tributary of Stouts Creek. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,250

TOTAL \$1,544

Screening Date 18-Apr-2019 **Docket No.** 2019-0962-AGR-E
Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Water Quality
Enf. Coordinator Steven Van Landingham

PCW
Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.38(g)(2)(G) and TPDES Permit No. WQ0004905000, Part VII, A.3(a)(2)

Violation Description Failed to provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for each RCS. Specifically, the Respondent did not provide a liner or capacity certification for RCS Nos. 5 and 6.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>
	<input type="text" value="100% of the rule requirements were not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Violation No. Water Quality
 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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	\$5,000	24-Jan-2019	28-Jan-2022	3.01	\$50	\$1,005	\$1,055
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for RCS Nos. 5 and 6. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$1,055

Screening Date 18-Apr-2019 **Docket No.** 2019-0962-AGR-E
Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Water Quality
Enf. Coordinator Steven Van Landingham

PCW
Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.39(g)(3), Tex. Water Code § 26.121(a)(1), and TPDES Permit No. WQ0004905000, Part VII, A.6(c)

Violation Description Failed to collect carcasses within 24 hours of death and properly dispose of them within three days of death. Specifically, the carcasses in the mortality management area were not properly buried, and were instead mounded, placed on the surface, and covered with top soil. Additionally, several carcasses were exposed with water pooling nearby.

Base Penalty \$25,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	5.0%
	Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 84 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the January 24, 2019 investigation date to the April 18, 2019 screening date.

Good Faith Efforts to Comply

10.0%

Reduction \$125

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		

Notes

The Respondent achieved compliance by January 25, 2020.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$75

Violation Final Penalty Total \$1,376

This violation Final Assessed Penalty (adjusted for limits) \$1,376

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Violation No. Water Quality
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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	\$1,500	24-Jan-2019	25-Jan-2020	1.00	\$75	n/a	\$75
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Remediation/Disposal cost to properly bury the carcasses in the mortality management area. The Date Required is the investigation date and the Final Date is the compliance date.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$75

Screening Date 18-Apr-2019

Docket No. 2019-0962-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 4 (April 2014)

Case ID No. 57678

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101716298

Media Water Quality

Enf. Coordinator Steven Van Landingham

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.39(g)(2), and TPDES Permit No. WQ0004905000, Part VII, B.5 and B.7

Violation Description Failed to maintain crops, vegetation, forage growth or post-harvest residues in pastures containing animals and failed to take reasonable steps to prevent adverse affects to human health or safety, or to the environment. Specifically, the open lot to the north and northeast of RCS No. 5 was denuded of nearly all vegetation and contaminated runoff was discharging into the tributary of Stouts Creek.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3 84 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended from the January 24, 2019 investigation date to the April 18, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$13,506

This violation Final Assessed Penalty (adjusted for limits) \$13,506

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
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	Costs Saved	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	\$500	24-Jan-2019	2-Mar-2020	1.10	\$28	n/a	\$28
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Remediation/Disposal to remove animals from the pasture to maintain crops, vegetation, forage growth or post-harvest residues in the pasture. The Date Required is the investigation date and the Final Date is the compliance date.

Economic Benefit for Remediation/Disposal cost included in Violation No. 1.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$28

Screening Date 18-Apr-2019

Docket No. 2019-0962-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 4 (April 2014)

Case ID No. 57678

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101716298

Media Water Quality

Enf. Coordinator Steven Van Landingham

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.38(g)(1)(C) and TPDES Permit No. WQ0004905000, Part VII, A.3(f)(3)

Violation Description Failed to stabilize embankment walls to prevent erosion or deterioration. Specifically, the west embankment of RCS No. 5 was eroded and deteriorated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes Human health or the environment will or could be exposed to pollutants that would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 15 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One monthly event is recommended from the January 24, 2019 investigation date to the February 8, 2019 compliance date.

Good Faith Efforts to Comply

25.0%

Reduction \$937

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		

Notes The Respondent achieved compliance by February 8, 2019.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$3,565

This violation Final Assessed Penalty (adjusted for limits) \$3,565

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Violation No. Water Quality 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$2,000	24-Jan-2019	8-Feb-2019	0.04	\$0	\$5	\$5
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Engineering/Construction cost to stabilize the embankment of RCS No. 5 to prevent erosion and deterioration. The Date Required is the investigation date and the Final Date is the compliance date.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$5

Screening Date 18-Apr-2019

Docket No. 2019-0962-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 4 (April 2014)

Case ID No. 57678

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101716298

Media Water Quality

Enf. Coordinator Steven Van Landingham

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 321.44(a) and TPDES Permit No. WQ0004905000, Part VIII, B.3

Violation Description Failed to submit written notification to the TCEQ within 14 working days of a discharge into water in the state. Specifically, the Respondent did not provide notification for the discharges from RCS No. 5 and the open lot located north and northeast of RCS No. 5 into the tributary of Stouts Creek on January 24, 2019.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			
Matrix Notes	100% of the rule requirements were not met.				

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 70

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$1,501

This violation Final Assessed Penalty (adjusted for limits) \$1,501

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Violation No. Water Quality
 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$25	7-Feb-2019	18-Apr-2019	0.19	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to notify the TCEQ of the unauthorized discharge that occurred on January 24, 2019. The Date Required is the written notification due date and the Final Date is the screening date.

Approx. Cost of Compliance \$25

TOTAL \$25

Screening Date 18-Apr-2019

Docket No. 2019-0962-AGR-E

PCW

Respondent Petrus Adrianus Boekhorst dba Petal Dairy

Policy Revision 4 (April 2014)

Case ID No. 57678

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101716298

Media Water Quality

Enf. Coordinator Steven Van Landingham

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0004905000, Part IX, Q

Violation Description Failed to submit any relevant facts in a permit application. Specifically, RCS No. 6 and a second center pivot irrigation system existed at the Site prior to the permit issuance and were not incorporated into the permit.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%
100% of the rule requirements were not met.					

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 84 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

Two single events are recommended, one for each unit.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$151

Violation Final Penalty Total \$3,001

This violation Final Assessed Penalty (adjusted for limits) \$3,001

Economic Benefit Worksheet

Respondent Petrus Adrianus Boekhorst dba Petal Dairy
Case ID No. 57678
Reg. Ent. Reference No. RN101716298
Media Violation No. Water Quality 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$500	9-May-2016	28-May-2022	6.05	\$151	n/a	\$151
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Permit cost to include authorization for the RCS No. 6 and the second center pivot irrigation system in the renewed permit. The Date Required is the permit issuance date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$151

Petrus Adrianus Boekhorst dba Petal Dairy
Docket No. 2019-0962-AGR-E

Sample Result Table

Parameter	TCEQ Sample No. AA79399 Upstream tributary for Reference	TCEQ Sample No. AA79400 Discharge into tributary of Stouts Creek	Increase from Upstream Sample
Ammonia as Nitrogen	0.10 mg/L	29.20 mg/L	29,100%
Nitrate + Nitrite as Nitrogen	3.87 mg/L	10.10 mg/L	161%
Total Phosphorous	0.14 mg/L	18.30 mg/L	12,971%
Total Suspended Solids	12.00 mg/L	58.00 mg/L	383%
Volatile Suspended Solids	< 5.00 mg/L	36.00 mg/L	> 620%
Five-day Biochemical Oxygen Demand	< 2.00 mg/L	132.00 mg/L	> 6,500%

mg/L = milligrams per liter



Compliance History Report

Compliance History Report for CN602843195, RN101716298, Rating Year 2018 which includes Compliance History (CH) components from September 1, 2013, through August 31, 2018.

Customer, Respondent, or Owner/Operator:	CN602843195, Boekhorst, Petrus Adrianus	Classification:	SATISFACTORY	Rating:	40.00
Regulated Entity:	RN101716298, PETAL DAIRY	Classification:	SATISFACTORY	Rating:	40.00
Complexity Points:	1	Repeat Violator:	NO		
CH Group:	12 - Agriculture, Forestry, Fishing, and Hunting				
Location:	336 County Road 3368 in Saltillo, Hopkins County, Texas				
TCEQ Region:	REGION 05 - TYLER				
ID Number(s):					
WASTEWATER AGRICULTURE PERMIT	WQ0004905000	WASTEWATER AGRICULTURE EPA ID	TX0132357		
WASTEWATER EPA ID	TX0132357				
Compliance History Period:	September 01, 2013 to August 31, 2018	Rating Year:	2018	Rating Date:	09/01/2018
Date Compliance History Report Prepared:	August 19, 2019				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	August 19, 2014 to August 19, 2019				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Herbert Darling			Phone:	(512) 239-2520

Site and Owner/Operator History:

- | | |
|--|-----|
| 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 |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- | | | |
|---|---|--|
| 1 | Effective Date: 02/20/2015 | ADMINORDER 2013-1859-AGR-E (1660 Order-Agreed Order With Denial) |
| | Classification: Major | |
| | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1) | |
| | 30 TAC Chapter 321, SubChapter B 321.31(a) | |
| | 30 TAC Chapter 321, SubChapter B 321.37(d) | |
| | Rqmt Prov: Section IX.D, Standard Permit Conditions PERMIT | |
| | Description: Failed to prevent the discharge of wastewater from a CAFO production area, as documented during an investigation conducted on July 16, 2013. Specifically, two RCSs were discharging wastewater from the production area to the cooling pond. | |
| | Classification: Major | |
| | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1) | |
| | 30 TAC Chapter 321, SubChapter B 321.31(a) | |
| | 30 TAC Chapter 321, SubChapter B 321.40(d) | |
| | Rqmt Prov: Pollution Prevention Plan Requirements PERMIT | |
| | Description: Failed to prevent the discharge of wastewater from a CAFO land management unit ("LMU"), as documented during an investigation conducted on July 16, 2013. Specifically, a leak from the center pivot irrigation system caused the ponding of wastewater in LMU No. 2, resulting in a discharge into an unnamed tributary of Greenwood Creek. | |

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	October 28, 2015	(1281834)
Item 2	December 15, 2016	(1370729)
Item 3	February 06, 2018	(1459195)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

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

Component Appendices

Appendix A

All NOV's Issued During Component Period 8/19/2014 and 8/19/2019

N/A

For Informational Purposes Only

Appendix B

All Investigations Conducted During Component Period August 19, 2014 and August 19, 2019

Item 1*	October 28, 2015**	(1281834)
Item 2*	December 15, 2016**	(1370729)
Item 3*	February 06, 2018**	(1459195)
Item 4	April 03, 2019	(1551783)

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2013 and 08/31/2018.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PETRUS ADRIANUS
BOEKHORST DBA PETAL DAIRY
RN101716298**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2019-0962-AGR-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Petrus Adrianus Boekhorst dba Petal 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 presented this Order to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a concentrated animal feeding operation located at 336 County Road 3368 in Saltillo, Hopkins County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on January 24, 2019 through February 7, 2019, an investigator documented that:
 - a. Retention control structure ("RCS") No. 5 was observed overflowing from three locations and discharging agricultural waste, including sludge and manure, into a tributary to Stouts Creek. Samples collected in the discharge path indicate an increase in pollutants from upstream measurements, as shown in the Sample Result Table below:

Sample Result Table			
Parameter	TCEQ Sample No. AA79399 Upstream tributary for Reference	TCEQ Sample No. AA79400 Discharge into tributary of Stouts Creek	Increase from Upstream Sample
Ammonia as Nitrogen	0.10 mg/L	29.20 mg/L	29,100%
Nitrate + Nitrite as Nitrogen	3.87 mg/L	10.10 mg/L	161%
Total Phosphorous	0.14 mg/L	18.30 mg/L	12,971%
Total Suspended Solids	12.00 mg/L	58.00 mg/L	383%
Volatile Suspended Solids	< 5.00 mg/L	36.00 mg/L	> 620%
Five-day Biochemical Oxygen Demand	< 2.00 mg/L	132.00 mg/L	> 6,500%

mg/L = milligrams per liter

- b. The Respondent did not provide a liner or capacity certification for RCS Nos. 5 and 6;
- c. The carcasses in the mortality management area were not properly buried, and were instead mounded, placed on the surface, and covered with top soil. Additionally, several carcasses were exposed with water pooling nearby;
- d. The open lot to the north and northeast of RCS No. 5 was denuded of nearly all vegetation and contaminated runoff was discharging into the tributary of Stouts Creek;
- e. The west embankment of RCS No. 5 was eroded and deteriorated;

- f. The Respondent did not provide notification for the discharges from RCS No. 5 and the open lot located north and northeast of RCS No. 5 into the tributary of Stouts Creek on January 24, 2019; and
 - g. RCS No. 6 and a second center pivot irrigation system existed at the Site prior to Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004905000 issuance and were not incorporated into the permit.
3. The Executive Director recognizes that the Respondent:
- a. Stabilized the embankment of RCS No. 5 to prevent erosion and deterioration by February 8, 2019;
 - b. Removed animals from the pasture to maintain crops, vegetation, forage growth or post-harvest residues in the pasture by March 2, 2020; and
 - c. Properly buried the carcasses in the mortality management area by January 25, 2020.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondent failed to ensure that the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event and failed to prevent the unauthorized discharge of agricultural waste into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(b)(2), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0004905000, Part VII, A.5(a).
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for each RCS, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.38(g)(2)(G) and TPDES Permit No. WQ0004905000, Part VII, A.3(a)(2).
4. As evidenced by Finding of Fact No. 2.c, the Respondent failed to collect carcasses within 24 hours of death and properly dispose of them within three days of death, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(g)(3), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0004905000, Part VII, A.6(c).
5. As evidenced by Finding of Fact No. 2.d, the Respondent failed to maintain crops, vegetation, forage growth or post-harvest residues in pastures containing animals and failed to take reasonable steps to prevent adverse affects to human health or safety, or to the environment, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.39(g)(2), and TPDES Permit No. WQ0004905000, Part VII, B.5 and B.7.

6. As evidenced by Finding of Fact No. 2.e, the Respondent failed to stabilize embankment walls to prevent erosion or deterioration, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.38(g)(1)(C) and TPDES Permit No. WQ0004905000, Part VII, A.3(f)(3).
7. As evidenced by Finding of Fact No. 2.f, the Respondent failed to submit written notification to the TCEQ within 14 working days of a discharge into water in the state, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.44(a) and TPDES Permit No. WQ0004905000, Part VIII, B.3.
8. As evidenced by Finding of Fact No. 2.g, the Respondent failed to submit any relevant facts in a permit application, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0004905000, Part IX, Q.
9. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of \$52,963 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid \$1,478 of the penalty. The remaining amount of \$51,485 shall be paid in 35 monthly payments of \$1,471 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 10 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Petrus Adrianus Boekhorst dba Petal Dairy, Docket No. 2019-0962-AGR-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Develop and implement procedures and conduct employee training to ensure the required retention capacity is available to contain rainfall and rainfall runoff from the design rainfall event; and
 - ii. Submit an application for a permit amendment to include authorization for the RCS No. 6 and the second center pivot irrigation system through the State of Texas Environmental Electronic Reporting System.

Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing.
 - b. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii, in accordance with Ordering Provision No. 2.e below.
 - c. Within 60 days after the effective date of this Order:
 - i. Remove and properly dispose of the sludge and manure deposited in the tributary of Stouts Creek; and
 - ii. Provide liner and capacity certifications by a licensed Texas professional engineer or licensed Texas professional geoscientist for RCS Nos. 5 and 6, in accordance with 30 TEX. ADMIN. CODE § 321.38(g)(2)(G) and TPDES Permit No. WQ0004905000, Part VII, A.3(a)(2).
 - d. Within 75 days after the effective date of this Order, submit written certification of compliance with Ordering Provision Nos. 2.c.i and 2.c.ii, in accordance with Ordering Provision No. 2.e below.
 - e. Within 360 days after the effective date of this Order, submit written certification that the permit was amended to include RCS No. 6 and the second center pivot. The certification shall be signed by the Respondent 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this 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 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.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.

7. 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 in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. This 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 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.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

1/5/2023

Date

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

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

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

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



Signature

12-8-2022
Date

PETRUS ADRIANUS BOEKHORST
Name (Printed or typed)
Authorized Representative of
Petrus Adrianus Boekhorst dba Petal Dairy

Owner
Title

If mailing address has changed, please check this box and provide the new address below: