

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1654-AGR-E TCEQ ID: RN102953007 CASE NO.: 26968
RESPONDENT NAME: ADOLFO TAPIA

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AGRICULTURE	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: two miles north of Farm-to-Market Road 1692, on Klattenhoff Road, Tom Green County</p> <p>TYPE OF OPERATION: Dairy</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 12, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Air Enforcement Section, MC 169, (512) 239-4490 TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479 Respondent: Mr. Adolfo Tapia, Owner, Adolfo Tapia Dairy, 13153 North Klattenhoff Road, Miles, Texas 76861 Respondent's Attorney: Mr. Joe Hernandez, Attorney at Law, Hernandez & Associates Law Firm, 508 West Concho, San Angelo, Texas 76903</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: March 22, 2005</p> <p>Dates of NOV/NOE Relating to this Case: May 7, 2005 (NOV); August 22, 2005 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on April 11, 2006. The Respondent filed an Answer on May 3, 2006. The Respondent signed an Agreed Order on May 7, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AGR</p> <p>1. Failed to maintain records of all employee training, including the dates when training occurred; all measurable rainfall events; acreage weather conditions during the land application and 24 hours before and after the land application; the name and address of the recipient of manure; and descriptions of the findings of each inspection conducted. Also by failing to provide correct information for the total manure, litter, and wastewater generated and land applied to each land management unit ("LMU") during the last twelve months on the 2004 annual report form [30 TEX. ADMIN. CODE §§ 321.36(j)(2) and (3), 321.46(b)(10), 321.46(d)(2), (3), (7), (8)(C) and (8)(G), 305.125(1), General Permit No. TXG920000, Part III.A.16(h), Part IV.A.(1)(a), (2)(b)(1)(iii) and (vii), Part IV.A.(2)(b)(2)(ii), Part IV.A.(4), and Part IV.B.(1)(b) and (c)].</p> <p>2. Failed to notify the TCEQ San Angelo Regional Office at least 48 hours prior to a change in the number or configuration of the LMUs and failed to submit a Notice of Change ("NOC")</p>	<p>Total Assessed: \$13,104</p> <p>Total Deferred: \$0</p> <p>Total Paid/Due to General Revenue: \$399/\$12,705</p> <p>The Respondent has paid \$399 of the administrative penalty. The remaining amount of \$12,705 shall be payable in 35 monthly payments of \$363 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes:</p> <ol style="list-style-type: none"> On February 11, 2005, Mr. Tapia ceased the land application of waste onto unauthorized property. On March 10, 2005, Mr. Tapia ceased the land application of wastewater to saturated ground to minimize and eliminate ponding or puddling of the wastewater. On September 3, 2005, Mr. Tapia provided corrected copies of the 2004 annual report form to reflect actual amounts of waste applied to each land management unit ("LMU"). On September 3, 2005, Mr. Tapia submitted notification to the TCEQ describing the reconfiguration of the LMUs described on the original Notice of Intent ("NOI") and the acquisition of additional property intended for use as an LMU which had not been included on the original NOI. On September 3, 2005, Mr. Tapia submitted revised and new maps which included the information required in Part III.A.(2)(a) and (b) of General Permit No. TXG920000. On September 3, 2005, Mr. Tapia submitted a copy of the recharge feature certification required by Part III.A.3 of General Permit No. TXG920000. On September 8, 2005, Mr. Tapia received authorization from the TCEQ to include about 300 acres as additional LMUs as part of the Facility's General Permit No. TXG920000. On October 19, 2005, Mr. Tapia submitted a Nutrient Management Plan ("NMP") and Nutrient Utilization Plan ("NUP") to the TCEQ for review and approval. The "NMP" was approved by the TCEQ on March 30, 2006. The Executive Director determined that an NUP was unnecessary because the phosphorus levels for all LMUs were below 200 parts per million.

<p>letter within 14 days upon becoming aware that relevant facts pertaining the use of additional LMUs had not been included as attachments to the Notice of Intent ("NOI") used to obtain authorization to discharge [30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG920000, Part IV.B.(2)(b) and Part II.C.8(a)].</p> <p>3. Failed to prepare the site map and land application map in accordance with the requirements [30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG920000, Part III.A.2(a) and (b)].</p> <p>4. Failed to include in the Pollution Prevention Plan ("PPP") a description of all potential pollutant sources, including the types of pollutant sources, and all measures that will be used to prevent contamination from the pollutant sources [30 TEX. ADMIN. CODE §§ 321.46(a)(6) and 305.125(1) and General Permit No. TXG920000, Part III.A.1(a)(2) and (3) and 4(a), (b), (c), and (d) and Part III.A.3].</p> <p>5. Failed to stabilize embankment walls of retention control structure (RCS) No. 2 and protect the liners of RCS Nos. 1 and 2 from animals and trees [30 TEX. ADMIN. CODE § 305.125(1), General Permit No. TXG920000, Part III.A.6(f) and A.9(b)(2)].</p> <p>6. Failed to prevent unauthorized discharges of waste by land applying liquid wastewater and solid manure waste to unauthorized sites [30 TEX. ADMIN. CODE § 321.31(a) and 305.125(1), General Permit No. TXG920000, Part III.A.11, TEX. WATER CODE § 26.121(c)].</p> <p>7. Failed to prevent the land application of waste on saturated ground or during rainfall events and by failing to manage irrigation practices to minimize pounding or puddling of wastewater on the site [30 TEX. ADMIN. CODE §§ 305.125(1) and 321.40(e) and (f) and General Permit No. TXG920000, Part III.A.11(b)(2) and (d)(1)].</p>		<p>Technical Requirements:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none">1. Immediately upon the effective date of the Commission Order:<ol style="list-style-type: none">a. Begin keeping training records which include the dates when training occurred, topic of training event, and names of persons attending the training, and maintain these records within the PPP as required;b. Begin maintaining updated records of all measurable rainfall events, acreage of each individual crop on which manure or wastewater is applied, weather conditions, information on any recipient of manure, and descriptions of inspection findings; andc. Begin updating and revising the PPP to include a description of all potential pollutant sources including manure, sludge, wastewater, dust, silage stockpiles, land application of manure and wastewater, and area with a high potential for significant soil erosion, and measure that will be used to prevent contamination from the pollutant sources, such as erosion and runoff controls and well protection.2. Within 30 days, stabilize embankment walls of RCSs and implement measures to ensure protection of the RCS liners.3. Within 45 days, submit written certification of compliance.
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned 29-Aug-2005	Screening 28-Sep-2005	EPA Due
	PCW 26-Jan-2006		

RESPONDENT/FACILITY INFORMATION	
Respondent	Adolfo Tapia
Reg. Ent. Ref. No.	RN102953007
Facility/Site Region	8-San Angelo <input type="checkbox"/> Major/Minor Source Minor Source <input checked="" type="checkbox"/>

CASE INFORMATION			
Enf./Case ID No.	26968	No. of Violations	7
Docket No.	2005-1654-AGR-E	Order Type	1660 <input checked="" type="checkbox"/>
Media Program(s)	Water Quality <input checked="" type="checkbox"/>	Enf. Coordinator	Merrilee Hupp
Multi-Media		EC's Team	Enforcement Team 1 <input checked="" type="checkbox"/>
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,200
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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	17% Enhancement	Subtotals 2, 3, & 7	\$1,904
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Notes Enhancement due to three NOV's with same or similar violations and one NOV without same or similar violations.

Culpability	No <input checked="" type="checkbox"/>	0% Enhancement	Subtotal 4	\$0
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Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes The respondent has not yet achieved compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,772	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$34,050	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,104
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$13,104
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,104
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DEFERRAL	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is offered because this is a non-expedited case.

PAYABLE PENALTY	\$13,104
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Screening Date 28-Sep-2005 **Docket No.** 2005-1654-AGR-E **PCW**
Respondent Adolfo Tapia *Policy Revision 2 (September 2002)*
Case ID No. 26968 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102953007
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>)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	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</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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 17%

>> **Repeat Violator (Subtotal 3)**

No **Adjustment Percentage (Subtotal 3) 0%**

>> **Compliance History Person Classification (Subtotal 7)**

Average **Adjustment Percentage (Subtotal 7) 0%**

>> **Compliance History Summary**

Compliance History Notes Enhancement due to three NOVs with same or similar violations and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 17%

Screening Date	28-Sep-2005	Docket No.	2005-1654-AGR-E	PCW
Respondent	Adolfo Tapia	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	26968	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102953007			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			
Violation Number	1			

Primary Rule Cite(s)
Secondary Rule Cite(s)

30 Tex. Admin. Code §§ 321.36(j)(2) and (3), 321.46(b)(10), 321.46(d)(2), (3), (7), (8)(C), and (8)(G); 305.125(1); General Permit No. TXG920000, Part III.A.16(h), Part IV.A.(1)(a), (2)(b)(1)(iii) and (vii), Part IV.A.(2)(b)(2)(ii), Part IV.A.(4), and Part IV.B.(1)(b) and (c)

Violation Description

Failure to maintain records of all employee training, including the dates when training occurred; all measurable rainfall events; acreage of each individual crop on which manure, litter, or wastewater is applied; the weather conditions during the land application and 24 hours before and after the land application; the name and address of the recipient of manure; and descriptions of the findings of each inspection conducted. Also failure to provide correct information for the total manure, litter, and wastewater generated and land applied to each land management unit ("LMU") during the last twelve months on the 2004 annual report form. Specifically, the 2004 annual report form showed 44,780 gallons/acre/year applied to Land Management Unit No. 1, which was a discrepancy when compared to the available 2004 irrigation application records indicating a 32,195 gallons/acre/year total. In addition, a total of 6,545 tons of manure was reported on the 2004 report as being generated compared to the manure application records which totalled 4,326 tons, as documented during the March 22, 2005 investigation.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="1%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

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: Adolfo Tapia
 Case ID No.: 26968
 Reg. Ent. Reference No.: RN102953007
 Media [Statute]: 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
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	12-Aug-2004	15-Apr-2006	1.7	\$42	n/a	\$42
Training/Sampling	\$300	12-Aug-2004	15-Apr-2006	1.7	\$25	n/a	\$25
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	15-Feb-2005	03-Sep-2005	0.5	\$1	n/a	\$1

Notes for DELAYED costs: Cost estimate is based on administrative costs of tracking the training and the required record keeping associated with rainfall, land application activities, inspections, and the export of manure. Date required is the application date for General Permit No. TXG920000 when the record-keeping system was to be in place and and final date is the expected date of compliance, with the exception of the corrected annual report which due by February 15, 2005 and received on September 3, 2005.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$850 TOTAL \$68

Screening Date 28-Sep-2005

Docket No. 2005-1654-AGR-E

PCW

Respondent Adolfo Tapia

Policy Revision 2 (September 2002)

Case ID No. 26968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102953007

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number

Primary Rule Cite(s)
Secondary Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and General Permit No. TXG920000, Part IV.B.(2)(b) and Part II.C.8(a)

Violation Description

Failure to notify the TCEQ San Angelo Regional Office at least 48 hours prior to a change in the number or configuration of LMUs and failure to submit a Notice of Change ("NOC") letter within 14 days upon becoming aware that relevant facts pertaining the use of additional LMUs had not been included as attachments to the Notice of Intent ("NOI") used to obtain authorization to discharge under General Permit No. TXG920000. Specifically, four LMUs consisting of 203 acres were reconfigured into three larger LMUs totaling 238 acres. The reconfiguration included 24 acres of an LMU previously used but not included with the NOI and two new LMUs were created from 321 acres purchased in 2001, as documented during the March 22, 2005 investigation.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

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 Adolfo Tapia
 Case ID No. 26968
 Reg. Ent. Reference No. RN102953007
 Media [Statute] Water Quality
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	22-Mar-2005	03-Sep-2005	0.5	\$5	n/a	\$5

Notes for DELAYED costs: Cost is an estimate for the administrative and consultant costs associated with the required notices. Date required is the investigation date and final date is when the required notices were received by the TCEQ.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
-Other (as needed)				-0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$200

TOTAL \$5

Screening Date 28-Sep-2005 **Docket No.** 2005-1654-AGR-E **PCW**
Respondent Adolfo Tapia *Policy Revision 2 (September 2002)*
Case ID No. 26968 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102953007
Media [Statute] Water Quality
Enf. Coordinator Merrilee Hupp

Violation Number
Primary Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and General Permit No. TXG920000, Part III.A.2(a) and (b)
Secondary Rule Cite(s)
Violation Description Failure to prepare the site map and land application map in accordance with the requirements of General Permit No. TXG920000. Specifically, the site map did not indicate barns, berms, all control facilities, LMUs, and wells. The land application map did not indicate all of the waste application boundaries or buffer zones.

Base Penalty

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

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

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text" value="5%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input checked="" type="checkbox"/>

Violation Base Penalty

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: Adolfo Tapia
 Case ID No: 26968
 Reg. Ent. Reference No: RN102953007
 Media (Statute): Water Quality
 Violation No: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	12-Aug-2004	02-Sep-2005	1.1	\$5	n/a	\$5

Notes for DELAYED costs: Cost reflects an estimate for including the additional information on the maps as required. Date required is when the correct maps should have been included in the Pollution Prevention Plan ("PPP") associated with the approval for General Permit No. TXG920000 and the final date is when the correct maps were submitted to achieve compliance with the requirement.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$100

TOTAL \$5

Screening Date	28-Sep-2005	Docket No.	2005-1654-AGR-E	PCW
Respondent	Adolfo Tapia	Policy Revision 2 (September 2002)		
Case ID No.	26968	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN102953007			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			
Violation Number	4			

Primary Rule Cite(s)
Secondary Rule Cite(s)

30 Tex. Admin. Code §§ 321.46(a)(6) and 305.125(1) and General Permit No. TXG920000, Part III.A.1.(a)(2) and (3) and 4.(a), (b), (c), and (d) and Part III.A.3

Violation Description

Failure to include in the Pollution Prevention Plan ("PPP") a description of all potential pollutant sources, including the types of pollutant sources, and all measures that will be used to prevent contamination from the pollutant sources. Specifically, the list of potential pollutant sources did not include manure/litter, sludge, wastewater, dust, silage stockpiles, and land application of manure, litter, and wastewater. Areas with a high potential of soil erosion with the potential to contribute pollutants to surface water were not all identified, nor were the measures used to limit erosion and pollutant runoff described. The PPP did not identify all the wells at the facility and describe how compliance with the buffer zone requirements was being achieved. Control facilities or measures were not included to address the silage liquor which is subject to discharge during stormwater events on the northeast corner of the silage area. A recharge feature certification, signed and sealed by a licensed Texas professional engineer or a licensed Texas professional geoscientist, documenting the absence or presence of any natural or artificial recharge features identified on tracts of land owned, operated, rented, or leased by the respondent and used as part of a Confined Animal Feeding Operation or LMU, was also not included in the PPP, as documented during the March 22, 2005 investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
				X	

Matrix Notes 25% of the permit requirement was not met.

Adjustment -\$9,900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$100

A single event is recommended.

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

Estimated EB Amount \$96 **Violation Final Penalty Total** \$117

This violation Final Assessed Penalty (adjusted for limits) \$117

Economic Benefit Worksheet

Respondent: Adolfo Tapia
 Case ID No: 26968
 Reg. Ent. Reference No: RN102953007
 Media [Statute]: Water Quality
 Violation No: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	12-Aug-2004	22-May-2006	1.8	\$3	\$59	\$62
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$200	12-Aug-2004	22-May-2006	1.8	\$18	n/a	\$18
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$300	12-Aug-2004	02-Sep-2005	1.1	\$16	n/a	\$16

Notes for DELAYED costs: Cost includes estimate for a recharge feature certification by a licensed Texas professional engineer or geoscientist, consultant fees, construction expenses, and record keeping associated with identifying the particular sources of potential pollutants and performing a site evaluation to address them as required. Date required is the date this documentation was to have been included within the PPP for the issuance of General Permit No. TXG920000 and final date is when compliance is expected to be achieved, with the exception of the recharge certification which was received on September 2, 2005.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000

TOTAL \$96

Screening Date	28-Sep-2005	Docket No.	2005-1654-AGR-E	PCW
Respondent	Adolfo Tapia	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	26968	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102953007			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			
Violation Number	5			
Primary Rule Cite(s)	30 Tex. Admin. Code § 305.125(1), General Permit No. TXG920000, Part III.A.6(f) and 9(b)(2)			
Secondary Rule Cite(s)				
Violation Description	Failure to stabilize embankment walls of retention control structure (RCS) No. 2 and protect the liners of RCS Nos. 1 and 2 from animals and trees.			
Base Penalty				\$10,000

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

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential			X	5%

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
Failure to maintain or protect RCSs may result in a release of an insignificant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.					

Adjustment -\$9,500

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty \$1,000

Two single events are recommended for the violations documented at RCS Nos. 1 and 2.

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

Estimated EB Amount	\$75	Violation Final Penalty Total	\$1,170
This violation Final Assessed Penalty (adjusted for limits)		\$1,170	

Economic Benefit Worksheet

Respondent: Adolfo Tapia
Case ID No.: 26968
Reg. Ent. Reference No.: RN102953007
Media [Statute]: Water Quality
Violation No.: 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$600	12-Aug-2004	22-May-2006	1.8	\$4	\$71	\$75
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost is estimate for construction and maintenance costs associated with the protection and stability of the RCSs. Date required is the date the application for General Permit No. TXG92000 was submitted and these measures were to be in place. 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$600

TOTAL \$75

Screening Date 28-Sep-2005 **Docket No.** 2005-1654-AGR-E **PCW**
Respondent Adolfo Tapia *Policy Revision 2 (September 2002)*
Case ID No. 26968 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102953007
Media [Statute] Water Quality
Enf. Coordinator Merrilee Hupp
Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 321.31(a) and 305.125(1); General Permit No. TXG920000, Part III.A.11; Tex. Water Code § 26.121(c)
Secondary Rule Cite(s)
Violation Description Failed to prevent unauthorized discharges of waste by land applying liquid wastewater and solid manure waste to unauthorized sites. Specifically, in September 2004, wastewater was applied to 24 acres identified as Land Application Area No. 4 in the respondent's previous, expired TPDES Registration No. WQ0003824000, and from August 23, 2004 until February 10, 2005, solid manure waste was applied to 321 acres located west of the facility currently covered by General Permit No. TXG920000. Neither of these sites were included as Land Management Units in the NOI submitted for authorization to discharge under General Permit No. TXG920000, as documented during the March 22, 2005 investigation.

Base Penalty \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

Matrix Notes The discharge of agricultural waste resulted in a release of a significant amount of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

<i>mark only one use a small x</i>	<i>daily</i>	
	<i>monthly</i>	
	<i>quarterly</i>	X
	<i>semiannual</i>	
	<i>annual</i>	
	<i>single event</i>	

Violation Base Penalty \$5,000

Two quarterly events are recommended from the date the violation was first documented (August 23, 2004) until the date the violation was last documented (February 10, 2005).

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

Estimated EB Amount -\$34

Violation Final Penalty Total \$5,850

This violation Final Assessed Penalty (adjusted for limits) \$5,850

Economic Benefit Worksheet

Respondent: Adolfo Tapia
 Case ID No.: 26968
 Reg. Ent. Reference No.: RN102953007
 Media [Statute]: Water Quality
 Violation No.: 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$1,000	23-Aug-2005	11-Feb-2005	-0.5	-\$26	n/a	-\$26
Permit Costs	\$300	23-Aug-2005	11-Feb-2005	-0.5	-\$8	n/a	-\$8
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Costs are those associated with the disposal of waste as well as the administrative and consultant fees for obtaining authorization to land apply waste at additional LMUs. Date required was the first documented unauthorized land application of waste and final date is when the unauthorized land application had ceased.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$1,300

TOTAL -\$34

Screening Date	28-Sep-2005	Docket No.	2005-1654-AGR-E	PCW
Respondent	Adolfo Tapia	Policy Revision 2 (September 2002)		
Case ID No.	26968	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN102953007			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			

Violation Number	7
Primary Rule Cite(s)	30 Tex. Admin. Code §§ 305.125(1) and 321.40(e) and (f); General Permit No. TXG920000, Part III.A.11(b)(2) and (d)(1)
Secondary Rule Cite(s)	
Violation Description	Failure to prevent the land application of waste on saturated ground or during rainfall events, as documented during a March 22, 2005 investigation. Also failure to manage irrigation practices to minimize ponding or puddling of wastewater on the site, as documented during a March 10, 2005 investigation.
Base Penalty	\$10,000

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

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual			X	Percent <input type="text" value="10%"/>
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text"/>
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Matrix Notes: Applying waste to saturated ground or during rainfall exposes human health and the environment to an insignificant amount of pollutants, below levels protective of human health or environmental receptors.

Adjustment

Base Penalty Subtotal

>> **Violation Events**

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	X

Violation Base Penalty

Two events are recommended based on the two dates the violations were documented.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,558"/>	Violation Final Penalty Total <input type="text" value="\$2,340"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,340"/>	

Economic Benefit Worksheet

Respondent: Adolfo Tapia
 Case ID No: 26968
 Reg. Ent. Reference No: RN102953007
 Media [Statute]: Water Quality
 Violation No: 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$30,000	25-Feb-2004	10-Mar-2005	1.0	\$1,558	n/a	\$1,558
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Cost is estimate for disposing of 120,000 gallons of liquid wastewater and manure to an authorized site during rainfall events or saturated soil. Date required is the first documented application of waste during rainfall and final date is when the application of waste resulting in ponding or puddling had ceased.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$30,000

TOTAL \$1,558

Compliance History

Customer/Respondent/Owner-Operator: CN601500226 TAPIA, ADOLFO Classification: AVERAGE Rating: 2.880
Regulated Entity: RN102953007 ADOLFO TAPIA DAIRY Classification: AVERAGE Site Rating: 2.75
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920008
Location: APPROXIMATELY TWO MILES NORTH OF FARM-TO-MARKET ROAD 1692, ON KLATTENHOFF ROAD IN TOM GREEN COUNTY Rating Date: 9/1/05 Repeat Violator: NO
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: November 01, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 31, 2000 to October 31, 2005
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? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments:

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

- 1 01/30/2004 (256511)
- 2 08/22/2005 (375040)
- 3 01/18/2001 (38629)

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

Date: 01/30/2004 (256511)
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 321, SubChapter B 321.42(l)
Description: Failure to adequately construct the previously authorized wastewater retention structure to the required 10 acre feet.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.41(f)
Rqmt Prov: PERMIT IA
Description: Failure to obtain final liner or capacity certification from a licensed professional engineer or licensed professional geoscientist prior to the use of the new wastewater retention control structure as required under 30 TAC 321.35(c)(8).
Date: 05/01/2005 (379384)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.40[G]

Rqmt Prov: PERMIT IA

Description: Failure to manage irrigation practices so as to ensure the application of wastewater applied to land management unit 1 (LMU #1) does not exceed the agronomic or hydrologic needs of the crop and minimize ponding or puddling of wastewater on the site.

Date: 01/9/2001

Self Report? NO

Classification: Moderate

Citation: Rqmt Prov: Permit No. WQ0003824-000, Section IV

Description: Failed to operate a facility within a maximum of 1000 dairy cows

Self Report? NO

Classification: Moderate

Citation: Rqmt Prov: Permit No. WQ0003824-000, Section VI, 1.3.5

Description: Failure to maintain operable irrigation equipment on site at all times capable of dewatering the retention pond

Self Report? NO

Classification: Moderate

Citation: Rqmt Prov: Permit No. WQ0003824-000, Section VI, 2.2.4

Description: Failure to conduct irrigation practices in such a way to prevent ponding or puddling

Self Report? NO

Classification: Moderate

Citation: Rqmt Prov: Permit No. WQ0003824-000, Section VI, 2.5.4

Description: Failure to disc waste material into soil within 48 hours of application

Self Report? NO

Classification: Moderate

Citation: Rqmt Prov: Permit No. WQ0003824-000, Section IV, 4.2

Description: Failure to store stockpiled manure in such a way to prevent discharge of contaminated runoff into waters in the State of Texas

Date: 02/04/2002

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(18)

Description: Failure to protect the liner from animals or tree roots

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.31(a)

Description: Failure to prevent discharge or disposal of waste or wastewater from animal feeding operations into or adjacent to waters in the state

Self Report? NO

Classification: Moderate

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

Description: Failure to maintain ponds, pipes, ditches, pumps, diversion and irrigation equipment

Self Report? NO

Classification: Minor

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

Description: Failure to provide records of maintenance, recent discharges, or livestock present in the RCS fenced area

Self Report? NO

Classification: Minor

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

Description: Failure to maintain records as required

Self Report? NO

Classification: Moderate

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

Description: Failure to conduct and document inspections of the facility at least once per year

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
ADOLFO TAPIA;
RN102953007

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2005-1654-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Adolfo Tapia ("Mr. Tapia") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Tapia, represented by Joe Hernandez of the Hernandez & Associates Law Firm, appear before the Commission and together stipulate that:

1. Mr. Tapia operates a dairy located approximately two miles north of Farm-to-Market Road 1692, on Klattenhoff Road, Tom Green County, Texas (the "Facility").
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.
3. The Commission and Mr. Tapia agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Tapia is subject to the Commission's jurisdiction.
4. Mr. Tapia received notice of the violations alleged in Section II ("Allegations") on or about August 27, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Tapia of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of thirteen thousand one hundred and four dollars (\$13,104.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Tapia has paid three hundred ninety nine dollars (\$399.00) of the administrative penalty. The remaining amount of twelve thousand

seven hundred and five dollars (\$12,705.00) shall be payable in 35 monthly payments of three hundred sixty-three dollars (\$363.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Tapia fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Tapia to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Tapia to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Tapia have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Tapia has implemented the following corrective measures at the Facility:
 - a. On February 11, 2005, Mr. Tapia ceased the land application of waste onto unauthorized property;
 - b. On March 10, 2005, Mr. Tapia ceased the land application of wastewater to saturated ground to minimize and eliminate ponding or puddling of the wastewater;
 - c. On September 3, 2005, Mr. Tapia provided corrected copies of the 2004 annual report form to reflect actual amounts of waste applied to each land management unit ("LMU");
 - d. On September 3, 2005, Mr. Tapia submitted notification to the TCEQ describing the reconfiguration of the LMUs described on the original Notice of Intent ("NOI") and the acquisition of additional property intended for use as an LMU which had not been included on the original NOI;
 - e. On September 3, 2005, Mr. Tapia submitted revised and new maps which included the information required in Part III.A.(2)(a) and (b) of General Permit No. TXG920000;
 - f. On September 3, 2005, Mr. Tapia submitted a copy of the recharge feature certification required by Part III.A.3 of General Permit No. TXG920000;

- g. On September 8, 2005, Mr. Tapia received authorization from the TCEQ to include about 300 acres as additional LMUs as part of the Facility's General Permit No. TXG920000; and
 - h. On October 19, 2005, Mr. Tapia submitted a Nutrient Management Plan and Nutrient Utilization Plan to the TCEQ for review and approval.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Tapia has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As documented during an inspection conducted on March 22, 2005, Mr. Tapia is alleged to have violated:

- a. 30 Tex. Admin. Code §§ 321.36(j)(2) and (3), 321.46(b)(10), 321.46(d)(2),(3),(7), (8)(C) and (8)(G), 305.125(1), General Permit No. TXG920000, Part III.A.16(h), Part IV.A.(1)(a), (2)(b)(1)(iii) and (vii), Part IV.A.(2)(b)(2)(ii), Part IV.A.(4), and Part IV.B.(1)(b) and (c), by failing to maintain records of all employee training, including the dates when training occurred; all measurable rainfall events; acreage of each individual crop on which manure, litter, or wastewater is applied; the weather conditions during the land application and 24 hours before and after the land application; the name and address of the recipient of manure; and descriptions of the findings of each inspection conducted. Also, by failing to provide correct information for the total manure, litter, and wastewater generated and land applied to each land management unit ("LMU") during the last twelve months on the 2004 annual report form.
- b. 30 Tex. Admin. Code § 305.125(1) and General Permit No. TXG920000, Part IV.B.(2)(b) and Part II.C.8(a), by failing to notify the TCEQ San Angelo Regional Office at least 48 hours prior to a change in the number or configuration of LMUs and failure to submit a Notice of Change ("NOC") letter within 14 days upon

becoming aware that relevant facts pertaining the use of additional LMUs had not been included as attachments to the Notice of Intent ("NOI") used to obtain authorization to discharge under General Permit No. TXG9200000.

- c. 30 Tex. Admin. Code § 305.125(1) and General Permit No. TXG920000, Part III.A.2(a) and (b), by failing to prepare the site map and land application map in accordance with the requirements of General Permit No. TXG920000.
- d. 30 Tex. Admin. Code §§ 321.46(a)(6) and 305.125(1) and General Permit No. TXG920000, Part III.A.1.(a)(2) and (3) and 4.(a), (b), (c), and (d) and Part III.A.3, by failing to include in the Pollution Prevention Plan ("PPP") a description of all potential pollutant sources, including the types of pollutant sources, and all measures that will be used to prevent contamination from the pollutant sources.
- e. 30 TEX. ADMIN. CODE § 305.125(1), General Permit No. TXG920000, Part III.A.6(f) and A.9(b)(2), by failing to stabilize embankment walls of retention control structure (RCS) No. 2 and protect the liners of RCS Nos. 1 and 2 from animals and trees.
- f. 30 Tex. Admin. Code §§ 321.31(a) and 305.125(1), General Permit No. TXG920000, Part III.A.11, Tex. Water Code § 26.121(c), by failing to prevent unauthorized discharges of waste by land applying liquid wastewater and solid manure waste to unauthorized sites
- g. 30 TEX. ADMIN. CODE §§ 305.125(1) and 321.40(e) and (f) and General Permit No. TXG920000, Part III.A.11(b)(2) and (d)(1), by failing to prevent the land application of waste on saturated ground or during rainfall events and by failing to manage irrigation practices to minimize ponding or puddling of wastewater on the site.

III. DENIALS

Mr. Tapia generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Tapia pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Tapia'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 action or penalties for violations

which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Adolfo Tapia, Docket No. 2005-1654-AGR-E" to:

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

2. Mr. Tapia shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order, Mr. Tapia shall:
 - i. begin keeping training records which include the dates when training occurred, topic of training event, and names of persons attending the training, and maintain these records within the PPP as required by Part III.A.16(h) of General Permit No. TXG920000 and 30 TEX. ADMIN. CODE § 321.46(b)(10).
 - ii. begin maintaining updated records of all measurable rainfall events, acreage of each individual crop on which manure or wastewater is applied, weather conditions, information on any recipient of manure, and descriptions of inspection findings as required by Part IV.A. of General Permit No. TXG920000 and 30 TEX. ADMIN. CODE § 321.46(d);
 - iii. begin updating and revising the PPP to include a description of all potential pollutant sources including manure, sludge, wastewater, dust, silage stockpiles, land application of manure and wastewater, and areas with a high potential for significant soil erosion, and measures that will be used to prevent contamination from the pollutant sources, such as erosion and runoff controls and well protection, as required by Part III.A.1.(a)(2) and 4. of General Permit No. TXG920000 and 30 TEX. ADMIN. CODE § 321.46(a)(6);
 - b. Within 30 days after the effective date of the Commission Order, Mr. Tapia shall stabilize embankment walls of RCSs and implement measures to ensure protection of the RCS liners, as required by Part III.A.6(f) and 9(b)(2) of General Permit No. TXG920000; and
 - c. Within 45 days after the effective date of the Commission Order, Mr. Tapia shall submit written certification of compliance with Ordering Provisions 2.a. through 2.b. The certification shall, include detailed supporting documentation including

photographs with descriptions and dates of the corrective action taken, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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."

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:

Mark Newman, Water Section
San Angelo Regional Office
Texas Commission on Environmental Quality
622 S. Oakes, Suite K
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Tapia. Mr. Tapia is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Tapia 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, Mr. Tapia's failure to comply is not a violation of this Agreed Order. Mr. Tapia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Tapia shall notify the Executive Director within seven days after Mr. Tapia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Tapia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Tapia receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Tapia in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Mr. Tapia, or three days after the date on which the Commission mails notice of the Order to Mr. Tapia, 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



For the Executive Director

8/9/07

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 the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified thereon. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

Adolfo Tapia
~~Joe Hernandez~~

Name (Printed or typed)

Authorized representative of

Adolfo Tapia

5-7-07

Date

Owner
Attorney

Title