EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1077-MLM-E **TCEQ ID:** RN102184199 **CASE NO.:** 34143

RESPONDENT NAME: Tapia Dairy #3, L.L.C.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	X MULTI-MEDIA (check all that apply)	X INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Tapia Dairy 3, 3913 Veribest Park Road, Tom Green County

TYPE OF OPERATION: Dairy

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Ezequiel A. Tapia, President/Owner, Tapia Dairy #3, L.L.C., 215 Private Road 3921, Miles, Texas 76861

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 3, 2007 **Date of NOV/NOE Relating to this Case:** May 31, 2007 (NOE) **Background Facts:** This was a routine investigation. Thirteen violations were documented. **WATER/WASTE** 1) Failed to maintain and keep on site all required records. Specifically, during the investigation it was determined that many of the required daily operation records, such as significant spills of potential pollutants, wastewater, manure, litter, and sludge removed from the Facility, all daily measurable rainfall events, weekly wastewater levels observed in the Retention Control Structure ("RCS"), land application events, mortality management practices, and weekly inspections, were maintained offsite and were not updated [30 TEX. ADMIN. CODE § 321.46(d) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operations ("CAFO") General Permit No. TXG920031, Part IV.A, Recordkeeping]. 2) Failed to properly operate and maintain the RCS to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event. Specifically, the investigator observed that the capacity of RCS No. 1 had been severely reduced due to an accumulation of solids, which caused the water level in RCS No. 2 to significantly encroach into the storm water capacity zone [30 TEX. ADMIN. CODE § 321.39(b) and (c) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(a)(1) and (b)(1)].	**Total Assessed:** $16,640 **Total Deferred:** $3,328 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $3,312 (remaining $10,000 due in 10 monthly payments of $1,000 each) **Site Compliance History Classification** __ **High** ___ **Average** _X_ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility: a. On May 31, 2007, provided documentation showing that the barrels and other containers had been removed from the pit located east of RCS No. 2; and b. On August 24, 2007, submitted a signed notice of change related to LMU configurations. **Ordering Provisions:** 2) The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order: i. Cease land application of wastewater between the time frame of one hour before sunset to one hour after sunrise to all LMUs within one-quarter mile of occupied residences until written agreements between the Respondent and the residents have been obtained; ii. Begin updating and maintaining on site all required records for the Facility, including but not limited to significant spills of potential pollutants, wastewater, manure, litter, and sludge removed from the Facility, all daily measurable rainfall events, weekly wastewater levels observed in the RCS, land application events, mortality management practices, and weekly inspections; iii. Begin retaining and maintaining on site all records of monitoring activities, including the date, time, and place of sample collection, identity of the individual who collected the sample, and the chain-of-custody procedures used to maintain sample integrity from sample collection to laboratory delivery; and iv. Begin properly maintaining the sump pump basin adjacent to the milking parlor to

3) Failed to obtain a written agreement from occupied residences within one-quarter mile of a land management unit ("LMU") before land applying manure, litter, or wastewater during the time frame of one hour before sunset to one hour after sunrise. Specifically, the irrigation records for LMU No. 1 indicated that on multiple occasions, irrigation within one-quarter mile from several on-site residences occurred for a 24-hour period. No written agreements for nighttime land application between the Respondent and the occupants were available [30 TEX. ADMIN. CODE § 321.40(j) and TPDES CAFO General Permit No. TXG920031, Part III.A.11(d)(3)]. 4) Failed to store manure/litter within a drainage area of an RCS or in a manner that otherwise prevents contaminated storm water runoff from the storage area. Specifically, a berm located between the calf hutch area and LMU No. 5 contained a breach at the north end. Bedding wastes appeared to be used to fill in the breach and were being stored on both sides of the berm. The investigator observed drainage occuring from the calf hutch area towards the LMU [30 TEX. ADMIN. CODE § 321.39(e) and TPDES CAFO General Permit No. TXG920031, Part III.A.8(b)]. 5) Failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, it was observed that the sump pump basin adjacent to the milking parlor had overflowed, the two settling basins draining to RCS No. 1 were full of solids, and two berms containing the silage storage areas were poorly maintained [30 TEX. ADMIN. CODE § 305.125(5) and TPDES CAFO General Permit No. TXG920031, Part V.D.]. 6) Failed to stabilize embankment walls of the RCS to prevent erosion or deterioration. Specifically, the west embankment of RCS No. 1 showed signs of erosion caused by improper drainage from the settling basins [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(f)(3)]. 7) Failed to update the site map to include all berms. Specifically, the site map did not depict the location of the two bermed silage storage areas [30 TEX. ADMIN. CODE § 321.46(a)(7)(A) and TPDES CAFO General Permit No. TXG920031, Part III.A.2(a)].		prevent further overflows. b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i. through 2.a.iv. c. Within 30 days after the effective date of this Agreed Order: i. Remove all bedding wastes from the north end of the berm located between the calf hutch area and LMU No. 5 and either properly dispose of the waste or relocate to a storage area located within the drainage area of the RCS; ii. Update the site map to depict the location of the two bermed silage storage areas; iii. Properly dispose of the barrels and containers that were removed from the pit located east of RCS No. 2; and iv. Remediate and properly dispose of the contaminated soils in the pit located east of RCS No. 2. d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.c.i. through 2.c.iv. e. Within 60 days after the effective date of this Agreed Order: i. Remove the solids from the two settling basins and RCS No. 1 to restore the design capacity of the RCS system; ii. Obtain written agreements to allow nighttime application of manure, litter, or wastewater from all residents within one-quarter mile of LMUs where land application will occur during the time frame of one hour before sunset to one hour after sunrise; iii. Repair the north end of the berm located between the calf hutch area and LMU No. 5 and the two berms containing the silage storage areas; and iv. Obtain and maintain in the PPP a recharge feature certification signed and sealed by a licensed Texas professional engineer, or a licensed Texas professional geoscientist, which identifies the presence of all natural and artificial recharge features. f. Within 75 days after the effective date of this Agreed Order, submit written

8) Failed to provide in the pollution prevention plan ("PPP") an adequate recharge feature certification. Specifically, the recharge feature certification did not identify wells as artificial recharge features or contain provisions for protective measures [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.3]. 9) Failed to sign all records as required. Specifically, the Respondent submitted a notice of change related to LMU configurations without a signature [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part V.J]. 10) Failed to ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist has conducted a site evaluation of the structural controls, including a review of the liner documentation [30 TEX. ADMIN. CODE § 321.46(c)(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(b)(3)]. 11) Failed to maintain records of monitoring activities. Specifically, the Respondent failed to maintain the records associated with collection activities of the samples for the annual wastewater, manure, and soil analysis for Fiscal Year 2006 [30 TEX. ADMIN. CODE § 305.125(11)(C) and TPDES CAFO General Permit No. TXG920031, Part V.I.2]. 12) Failed to obtain certification from a licensed Texas professional engineer for the design and completed construction of a modified RCS. Specifically, the current design certification for RCS No. 1 indicated that wastewater was to enter the RCS through a pipe. During the investigation, it was observed that wastewater instead entered the RCS via a trench that had been cut through the southwest corner of the embankment. No certification for this modification was available [30 TEX. ADMIN. CODE § 321.38(e)(2) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(a)(1)]. 13) Failed to properly dispose of industrial solid waste. Specifically, the investigator observed a pit located east of RCS No. 2 where barrels and containers of petroleum based waste and other chemicals had been discarded. Some of the barrels had a build-up of oily residue on the outside and still contained substances and there were several areas where the waste had leaked into the		certification of compliance with Ordering Provision Nos. 2.e.i. through 2.e.iv. g. Within 90 days after the effective date of this Agreed Order: i. Repair the west embankment of RCS No. 1 to ensure the embankment is stabilized to prevent erosion or deterioration; and ii. Replace the trench in the southwest corner of the embankment of RCS No. 1 with a pipe, as specified in the current design criteria or obtain certification from a licensed Texas professional engineer that the modification to the RCS is in accordance with the technical standards developed by the Natural Resources Conservation Service, American Society of Agricultural Engineers, American Society of Civil Engineers, or American Society of Testing Materials. h. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.g.i. and 2.g.ii. i. Within 120 days after the effective date of this Agreed Order, ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist conducts a site evaluation of the settling basins and the RCS system. The evaluation shall include certifications that the capacity and construction of the RCS system meets the design criteria, the west embankment is properly stabilized to prevent erosion or deterioration, and no significant hydrologic connection exists between the contained wastewater in RCS Nos. 1 and 2 and water in the state. j. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.i. k. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.j.

soil. Sample results indicated that petroleum based pollutants were present in the waste and exposed soils [30 TEX. ADMIN. CODE § 335.4].		

Additional ID No(s).: TXG920031

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision June 26, 2007*

TCEQ

DATES					
Assigned	4-Jun-2007				
PCW	26-Sep-2007	Screening	7-Jul-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tapia Dairy #3, L.L.C.		
Reg. Ent. Ref. No.	RN102184199		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34143	No. of Violations	13
Docket No.	2007-1077-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media	Industrial and Hazardous Waste	EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$12,800**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **30%** Enhancement — *Subtotals 2, 3, & 7* **$3,840**

Notes: The penalty is enhanced due to one NOV with violations same or similar to those cited in this action and one final enforcement order without a denial of liability.

Culpability — No — **0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — **0%** Reduction — *Subtotal 5* **$0**

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

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	$763
Approx. Cost of Compliance	$13,535

0% Enhancement* — **Capped at the Total EB $ Amount* — *Subtotal 6* **$0**

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$16,640**

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* **$0**

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount **$16,640**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$16,640**

DEFERRAL — **20%** Reduction — *Adjustment* **-$3,328**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$13,312**

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34143

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> **Compliance History *Site* Enhancement (Subtotal 2)**

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 30%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action and one final enforcement order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34143

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 321.46(d) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operations ("CAFO") General Permit No. TXG920031, Part IV.A, Recordkeeping

Violation Description Failed to maintain and keep on site all required records. Specifically, during the investigation it was determined that many of the required daily operation records, such as significant spills of potential pollutants, wastewater, manure, litter, and sludge removed from the Facility, all daily measurable rainfall events, weekly wastewater levels observed in the retention control structure ("RCS"), land application events, mortality management practices, and weekly inspections were maintained offsite and were not updated.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 5%

Matrix Notes: More than 30% but less than 70% of the rule requirement was met.

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1

65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $17

Statutory Limit Test

Violation Final Penalty Total $650

This violation Final Assessed Penalty (adjusted for limits) $650

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$500	3-May-2007	31-Dec-2007	0.7	$17	n/a	$17
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	Estimated cost to ensure all records are regularly updated and maintained on site. Date required is the investigation date. Final date is the expected date of compliance.						
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: $500

TOTAL: $17

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 321.39(b) and (c) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(a)(1) and (b)(1)

Violation Description Failed to properly operate and maintain the RCS to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event. Specifically, the investigator observed that the capacity of RCS No. 1 had been severely reduced due to an accumulation of solids, which caused the water level in RCS No. 2 to significantly encroach into the storm water capacity zone.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to properly maintain the RCS could result in human health or the environment being exposed to significant amounts of pollutants which would not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date (May 3, 2007) to the screening date (July 7, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $145

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$2,500	3-May-2007	29-Feb-2008	0.8	$7	$138	$145
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)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to remove the solids from the RCS to restore capacity of the system. Date required is the investigation date. Final date is the expected date of compliance.

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 $2,500

TOTAL $145

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 321.40(j) and TPDES CAFO General Permit No. TXG920031, Part III.A.11(d)(3)

Violation Description Failed to obtain a written agreement from occupied residences within one-quarter mile of a land management unit ("LMU") before land applying manure, litter, or wastewater during the time frame of one hour before sunset to one hour after sunrise. Specifically, the irrigation records for LMU No. 1 indicated that on multiple occasions, irrigation within one-quarter mile from several on-site residences occurred for a 24-hour period. No written agreements for nighttime land application between the Respondent and the occupants were available.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	3-May-2007	29-Feb-2008	0.8	$4	n/a	$4

Notes for DELAYED costs: Estimated cost to obtain written agreements to allow nighttime irrigation within one-quarter mile of occupied residences. Date required is the investigation date. Final date is the expected date of compliance.

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 $4

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 321.39(e) and TPDES CAFO General Permit No. TXG920031, Part III.A.8(b)

Violation Description Failed to store manure/litter within a drainage area of an RCS or in a manner that otherwise prevents contaminated storm water runoff from the storage area. Specifically, a berm located between the calf hutch area and LMU No. 5 contained a breach at the north end. Bedding wastes appeared to be used to fill in the breach and were being stored on both sides of the berm. The investigator observed drainage occuring from the calf hutch area towards the LMU.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Runoff from an uncontained bedding waste stockpile will or could expose human health or the environment to significant amounts of pollutants which would not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date (May 3, 2007) to the screening date (July 7, 007).

Economic Benefit (EB) for this violation

Estimated EB Amount $26

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$500	3-May-2007	31-Jan-2008	0.7	$1	$25	$26
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)				0.0	$0	n/a	$0

Notes for DELAYED costs Estimated cost to properly dispose of or relocate the bedding waste stockpiles. Date required is the investigation date. Final date is the expected date of compliance.

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 $500

TOTAL $26

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 305.125(5) and TPDES CAFO General Permit No. TXG920031, Part V.D

Violation Description Failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, it was observed that the sump pump basin adjacent to the milking parlor had overflowed, the two settling basins draining to RCS No. 1 were full of solids, and two berms containing the silage storage areas were poorly maintained.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to properly operate and maintain all facilities and systems of control could result in human health or the environment being exposed to significant amounts of pollutants which would not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 5 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $5,000

Five quarterly events (one quarterly event for each control area not being maintained) are recommended from the investigation date (May 3, 2007) to the screening date (July 7, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $290

Statutory Limit Test

Violation Final Penalty Total $6,500

This violation Final Assessed Penalty (adjusted for limits) $6,500

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$5,000	3-May-2007	29-Feb-2008	0.8	$14	$276	$290
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)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to make repairs and adjustments to properly maintain the control facilities. Date required is the investigation date. Final date is the expected date of compliance.

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: $5,000

TOTAL: $290

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(f)(3)

Violation Description Failed to stabilize embankment walls of the RCS to prevent erosion or deterioration. Specifically, the west embankment of RCS No. 1 showed signs of erosion caused by improper drainage from the settling basins.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to stabilize embankment walls will or could expose human health or the environment to insignificant amounts of pollutants which would not exceed protective levels.

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $64

Statutory Limit Test

Violation Final Penalty Total $650

This violation Final Assessed Penalty (adjusted for limits) $650

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$1,000	3-May-2007	31-Mar-2008	0.9	$3	$61	$64
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)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to repair and stabilize the RCS embankment. Date required is the investigation date. Final date is the expected date of compliance.

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: $64

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34143

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 321.46(a)(7)(a) and TPDES CAFO General Permit No. TXG920031, Part III.A.2(a)

Violation Description Failed to update the site map to include all berms. Specifically, the site map did not depict the location of the two bermed silage storage areas.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes: At least 70% of the permit requirement was met.

Adjustment $9,900

$100

Violation Events

1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $130

This violation Final Assessed Penalty (adjusted for limits) $130

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$50	3-May-2007	31-Jan-2008	0.7	$2	n/a	$2
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: Estimated cost to update the site map. Date required is the investigation date. Final date is the expected date of compliance.

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: $50

TOTAL: $2

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.3

Violation Description Failed to provide in the pollution prevention plan ("PPP") an adequate recharge feature certification. Specifically, the recharge feature certification did not identify wells as artificial recharge features or contain provisions for protective measures.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes: At least 70% of the permit requirement was met.

Adjustment $9,900

$100

Violation Events

1 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $17

Statutory Limit Test

Violation Final Penalty Total $130

This violation Final Assessed Penalty (adjusted for limits) $130

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 8

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$300	3-May-2007	29-Feb-2008	0.8	$1	$17	$17
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: Estimated cost to update the recharge feature certification. Date required is the investigation date. Final date is the expected date of compliance.

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: $300

TOTAL: $17

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 9

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part V.J

Violation Description Failed to sign all records as required. Specifically, the Respondent submitted a notice of change related to LMU configurations without a signature.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes: At least 70% of the permit requirement was met.

Adjustment $9,900

$100

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended based on documenation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $130

This violation Final Assessed Penalty (adjusted for limits) $130

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 9

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$10	21-Mar-2006	24-Aug-2007	1.4	$0	$1	$1
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)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to sign and submit the notice of change. Date required is the date the unsigned notice of change was submitted. Final date is the date of compliance.

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: $10

TOTAL: $1

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 10

Rule Cite(s) 30 Tex. Admin. Code § 321.46(c)(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(b)(3)

Violation Description Failed to ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist has conducted a site evaluation of the structural controls, including a review of the liner documentation.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

OR

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to have an engineer inspect the structural controls could prevent the detection of maintenance issues that would expose human health or the environment to significant amounts of pollutants that would not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date (May 3, 2007) to the screening date (July 7, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $70

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 10

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$1,000	3-May-2007	30-Apr-2008	1.0	$3	$66	$70
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: Estimated cost to have a licensed engineer conduct a site evaluation. Date required is the investigation date. Final date is the expected date of compliance.

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: $70

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 11

Rule Cite(s) 30 Tex. Admin. Code § 305.125(11)(C) and TPDES CAFO General Permit No. TXG920031, Part V.I.2

Violation Description Failed to maintain records of monitoring activities. Specifically, the Respondent failed to maintain the records associated with collection activities of the samples for the annual wastewater, manure, and soil analysis for Fiscal Year 2006.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Major	Harm: Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 5%

Matrix Notes: More than 30% but less than 70% of the permit requirement was met.

Adjustment $9,500

$500

Violation Events

Number of Violation Events 1 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $650

This violation Final Assessed Penalty (adjusted for limits) $650

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 11

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$75	3-May-2007	31-Dec-2007	0.7	$2	n/a	$2
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: Estimated cost to ensure that sample collection information is maintained on site. Date required is the investigation date. Final date is the expected date of compliance.

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: $75

TOTAL: $2

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

V12 12

Rule Cite(s) 30 Tex. Admin. Code § 321.38(e)(2) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(a)(1)

Violation Description Failed to obtain certification from a licensed Texas professional engineer for the design and completed construction of a modified RCS. Specifically, the design certification for RCS No. 1 maintained in the PPP indicated that wastewater was to enter the RCS through a pipe. During the investigation, it was observed that wastewater instead entered the RCS via a trench that had been cut through the southwest corner of the embankment. No certification for this modification was available.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended based on documentation of the violation during the investigation on May 3, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $70

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 12

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$1,000	3-May-2007	30-Apr-2008	1.0	$3	$66	$70
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: Estimated cost to obtain certification from an engineer for the modification of the RCS. Date required is the investigation date. Final date is the expected date of compliance.

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: $70

Screening Date 7-Jul-2007 **Docket No.** 2007-1077-MLM-E **PCW**

Respondent Tapia Dairy #3, L.L.C. *Policy Revision 2 (September 2002)*

Case ID No. 34143 *PCW Revision June 26, 2007*

Reg. Ent. Reference No. RN102184199

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 13

Rule Cite(s) 30 Tex. Admin. Code § 335.4

Violation Description Failed to properly dispose of industrial solid waste. Specifically, the investigator observed a pit located east of RCS No. 2 where barrels and containers of petroleum based waste and other chemicals had been discarded. Some of the barrels had a build-up of oily residue on the outside and still contained substances and there were several areas where the waste had leaked into the soil. Sample results indicated that petroleum based pollutants were present in the waste and exposed soils.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to properly dispose of industrial solid waste has exposed human health or the environment to insignificant amounts of pollutants which do not exceed protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 65 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended from the investigation date (May 3, 2007) to the screening date (July 7, 2007).

Economic Benefit (EB) for this violation

Estimated EB Amount $56

Statutory Limit Test

Violation Final Penalty Total $1,300

This violation Final Assessed Penalty (adjusted for limits) $1,300

Economic Benefit Worksheet

Respondent Tapia Dairy #3, L.L.C.
Case ID No. 34143
Reg. Ent. Reference No. RN102184199
Media Water Quality
Violation No. 13

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
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	$1,500	3-May-2007	31-Jan-2008	0.7	$56	n/a	$56
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs Estimated cost to remove and properly dispose of the barrels, containers, and contaminated soils. Date required is the investigation date. Final date is the expected date of compliance.

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 $1,500

TOTAL $56

Compliance History

Customer/Respondent/Owner-Operator:	CN603243122	Tapia Dairy #3, L.L.C.	Classification: AVERAGE Rating: 16.09
Regulated Entity:	RN102184199	TAPIA DAIRY 3	Classification: POOR Site Rating: 55.33
ID Number(s):	WASTEWATER AGRICULTURE		PERMIT TXG920975
Location:	3913 VERIBEST PARK RD, TOM GREEN CO, TX		Rating Date: September 01 07 Repeat Violator: No
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	September 26, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 26, 2002 to September 26, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lynley Doyen Phone: 512-239-1364

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	Yes
3. If Yes, who is the current owner?	Tapia Dairy #3, L.L.C.
4. if Yes, who was/were the prior owner(s)?	Tapia Dairy, Inc. Tapia Dairy #3, L.L.C.
5. When did the change(s) in ownership occur?	08/31/2007 09/01/2004

Components (Multimedia) for the Site :

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

Effective Date: 02/13/2004 ADMINORDER 2002-1224-AGR-E

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 321, SubChapter B 321.40(8)
30 TAC Chapter 321, SubChapter B 321.40(9)
Description: Failed to properly manage waste to not create a nuisance condition or an environmental or public health hazard.

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 321, SubChapter B 321.40(11)
Rqmt Prov: Sect VI SP F PERMIT
Sect VI SP F.1 PERMIT
Description: Failed to properly bury or remove the dairy operation's dead cattle within two days of death to prevent contamination of the waters in the state and/or degradation of existing water usage and w/out creating a nuisance.

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(7)
30 TAC Chapter 321, SubChapter B 321.33(p)
30 TAC Chapter 321, SubChapter B 321.40(1)
30 TAC Chapter 321, SubChapter B 321.40(2)
Description: Failed to obtain a permit amendment prior to any increase in the number of animals authorized for confinement or prior to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination.

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Sect VI SP H.3 PERMIT
Description: Failed to perform quarterly monitoring for the second quarter of 2001 and the second quarter of 2002.

Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(24)(K)
Description: Failed to maintain earthen pens.

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 12/11/2002 (19195)
2 08/08/2003 (149193)
3 01/25/2006 (451974)
4 05/31/2007 (562327)
5 06/20/2007 (560568)

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

Date: 01/25/2006 (451974)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(8)(G)
Rqmt Prov: PERMIT Part IV.A(2)(b)(1)(vii)
Description: Failure to maintain the corresponding weather conditions for approximately 61 wastewater irrigation events conducted on the available land management units (LMU) #1, #2 and #3.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.36(e)(2)(B)
Rqmt Prov: PERMIT Part IV.A(2)(b)(2)(ii)
Description: Failure to provide the addresses of the recipients of the solid waste transported off site during 2004 and 2005.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(7)
Rqmt Prov: PERMIT Part IV.A(4)
Description: Failure to adequately maintain the weekly control facility inspection records documenting the apparent inspection findings during 2005.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)[G]
Rqmt Prov: PERMIT Part IV.A
Description: Failure to maintain and keep on site all required records.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(7)(A)
Rqmt Prov: PERMIT Part IV.A(7)(g)
Description: Failure to maintain a current or amended site plan representative of the conditions on site.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.34(b)(3)
Rqmt Prov: PERMIT Part IV.B(2)(b)
Description: Failure to notify the appropriate TCEQ regional office at least 48 hours prior to any change in the number or configuration of LMUs.

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 335, SubChapter A 335.4[G]
Rqmt Prov: PERMIT Part III.A.1(a)(2)
Description: Failure to prevent discharges of petroleum hydrocarbons to the environment and properly manage wastes in a manner to prevent an imminent threat of discharges to the environment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 321, SubChapter B 321.46(a)(6)
Rqmt Prov: PERMIT Part III.A.4(a)
Description: Failure to provide a complete list of the potential pollutant sources or the applicable handling procedures for the applicable sources.

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 321, SubChapter B 321.39(b)
30 TAC Chapter 321, SubChapter B 321.39(c)
Rqmt Prov: PERMIT Part III.A.9(a)(1)
PERMIT Part III.A.9(b)(1)
Description: Failure to properly operate and maintain the RCS to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.40(f)
Rqmt Prov: PERMIT Part III.A.11(b)(2)
Description: Failure to comply with the conditions of the permit by land applying irrigated wastewater on the available land management units (LMUs) No's. 1 and 3, during three separate rainfall events.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.40(j)
Rqmt Prov: PERMIT Part III.A.11(d)(3)
Description: Failed to obtain a written agreement from occupied residences within one-quarter mile of a LMU before land applying manure, litter, or wastewater during the time frame of one hour before sunset to one hour after sunrise.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 321, SubChapter B 321.46(d)(8)(D)

Rqmt Prov: PERMIT Part IV.A(2)(b)(1)(iv)
Description: Failure to accurately calculate the agronomic rates of the land applied wastes on site using the authorized acreage value for the representative LMUs as authorized in the August 11, 2004 Notice of Intent (NOI).

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
TAPIA DAIRY #3, L.L.C.	§	
RN102184199	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1077-MLM-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Tapia Dairy #3, L.L.C. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy located at 3913 Veribest Park Road in Tom Green County, Texas (the "Facility").

2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

3. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

4. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 5, 2007.

6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of Sixteen Thousand Six Hundred Forty Dollars ($16,640) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Three Hundred Twelve Dollars ($3,312) of the administrative penalty and Three Thousand Three Hundred Twenty-Eight Dollars ($3,328) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

   The remaining amount of Ten Thousand Dollars ($10,000) of the administrative penalty shall be payable in ten monthly payments of One Thousand Dollars ($1,000) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

8. 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.

9. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

    a. On May 31, 2007, provided documentation showing that the barrels and other containers had been removed from the pit located east of Retention Control Structure ("RCS") No. 2; and

    b. On August 24, 2007, submitted a signed notice of change related to land management unit ("LMU") configurations.

11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

12. 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.

13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to maintain and keep on site all required records, in violation of 30 TEX. ADMIN. CODE § 321.46(d) and Texas Pollutant Discharge Elimination System ("TPDES") Concentrated Animal Feeding Operations ("CAFO") General Permit No. TXG920031, Part IV.A, Recordkeeping, as documented during an investigation conducted on May 3, 2007. Specifically, during the investigation it was determined that many of the required daily operation records, such as significant spills of potential pollutants, wastewater, manure, litter, and sludge removed from the Facility, all daily measurable rainfall events, weekly wastewater levels observed in the RCS, land application events, mortality management practices, and weekly inspections, were maintained offsite and were not updated.

2. Failed to properly operate and maintain the RCS to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event, in violation of 30 TEX. ADMIN. CODE § 321.39(b) and (c) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(a)(1) and (b)(1), as documented during an investigation conducted on May 3, 2007. Specifically, the investigator observed that the capacity of RCS No. 1 had been severely reduced due to an accumulation of solids, which caused the water level in RCS No. 2 to significantly encroach into the storm water capacity zone.

3. Failed to obtain a written agreement from occupied residences within one-quarter mile of a LMU before land applying manure, litter, or wastewater during the time frame of one hour before sunset to one hour after sunrise, in violation of 30 TEX. ADMIN. CODE § 321.40(j) and TPDES CAFO General Permit No. TXG920031, Part III.A.11(d)(3), as documented during an investigation conducted on May 3, 2007. Specifically, the irrigation records for LMU No. 1 indicated that on multiple occasions, irrigation within one-quarter mile from several on-site residences occurred for a 24-hour period. No written agreements for nighttime land application between the Respondent and the occupants were available.

4. Failed to store manure/litter within a drainage area of an RCS or in a manner that otherwise prevents contaminated storm water runoff from the storage area, in violation of 30 TEX. ADMIN. CODE § 321.39(e) and TPDES CAFO General Permit No. TXG920031, Part III.A.8(b), as documented during an investigation conducted on May 3, 2007. Specifically, a berm located between the calf hutch area and LMU No. 5 contained a breach at the north end. Bedding wastes appeared to be used to fill in the breach and were being stored on both sides of the berm. The investigator observed drainage occuring from the calf hutch area towards the LMU.

5. Failed to properly operate and maintain all facilities and systems of treatment and control, in violation of 30 TEX. ADMIN. CODE § 305.125(5) and TPDES CAFO General Permit No. TXG920031, Part V.D, as documented during an investigation conducted on May 3, 2007. Specifically, it was observed that the sump pump basin adjacent to the milking parlor had overflowed, the two settling basins draining to RCS No. 1 were full of solids, and two berms containing the silage storage areas were poorly maintained.

6. Failed to stabilize embankment walls of the RCS to prevent erosion or deterioration, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(f)(3), as documented during an investigation conducted on May 3, 2007. Specifically, the west embankment of RCS No. 1 showed signs of erosion caused by improper drainage from the settling basins.

7. Failed to update the site map to include all berms, in violation of 30 TEX. ADMIN. CODE § 321.46(a)(7)(A) and TPDES CAFO General Permit No. TXG920031, Part III.A.2(a), as documented during an investigation conducted on May 3, 2007. Specifically, the site map did not depict the location of the two bermed silage storage areas.

8. Failed to provide in the pollution prevention plan ("PPP") an adequate recharge feature certification, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.3, as documented during an investigation conducted on May 3, 2007. Specifically, the recharge feature certification did not identify wells as artificial recharge features or contain provisions for protective measures.

9. Failed to sign all records as required, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CAFO General Permit No. TXG920031, Part V.J, as documented during an investigation conducted on May 3, 2007. Specifically, the Respondent submitted a notice of change related to LMU configurations without a signature.

10. Failed to ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist has conducted a site evaluation of the structural controls, including a review of the liner documentation, in violation of 30 TEX. ADMIN. CODE § 321.46(c)(1) and TPDES CAFO General Permit No. TXG920031, Part III.A.9(b)(3), as documented during an investigation conducted on May 3, 2007.

11. Failed to maintain records of monitoring activities, in violation of 30 TEX. ADMIN. CODE § 305.125(11)(C) and TPDES CAFO General Permit No. TXG920031, Part V.I.2, as documented during an investigation conducted on May 3, 2007. Specifically, the Respondent failed to maintain the records associated with collection activities of the samples for the annual wastewater, manure, and soil analysis for Fiscal Year 2006.

12. Failed to obtain certification from a licensed Texas professional engineer for the design and completed construction of a modified RCS, in violation of 30 TEX. ADMIN. CODE § 321.38(e)(2) and TPDES CAFO General Permit No. TXG920031, Part III.A.6(a)(1), as documented during an investigation conducted on May 3, 2007. Specifically, the current design certification for RCS No. 1 indicated that wastewater was to enter the RCS through a pipe. During the investigation, it was observed that wastewater instead entered the RCS via a trench that had been cut through the southwest corner of the embankment. No certification for this modification was available.

13. Failed to properly dispose of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4, as documented during an investigation conducted on May 3, 2007. Specifically, the investigator observed a pit located east of RCS No. 2 where barrels and containers of petroleum based waste and other chemicals had been discarded. Some of the barrels had a build-up of oily residue on the outside and still contained substances and there were several areas where the waste had leaked into the soil. Sample results indicated that petroleum based pollutants were present in the waste and exposed soils.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Tapia Dairy #3, L.L.C., Docket No. 2007-1077-MLM-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order:

      i. Cease land application of wastewater between the time frame of one hour before sunset to one hour after sunrise to all LMUs within one-quarter mile of occupied residences until written agreements between the Respondent and the residents have been obtained, as required in Ordering Provision No. 2.e.ii. below;

      ii. Begin updating and maintaining on site all required records for the Facility, including but not limited to significant spills of potential pollutants, wastewater, manure, litter, and sludge removed from the Facility, all daily measurable rainfall events, weekly wastewater levels observed in the RCS, land application events, mortality management practices, and weekly inspections, as described in 30 TEX. ADMIN. CODE § 321.46(d) and TPDES CAFO General Permit No. TXG920031, Part IV.A, Recordkeeping;

      iii. Begin retaining and maintaining on site all records of monitoring activities, including the date, time, and place of sample collection, identity of the individual who collected the sample, and the chain-of-custody procedures used to maintain sample integrity from sample collection to laboratory delivery; and

      iv. Begin properly maintaining the sump pump basin adjacent to the milking parlor to prevent further overflows.

b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i. through 2.a.iv., as described in Ordering Provision No. 2.k. below.

c. Within 30 days after the effective date of this Agreed Order:

   i. Remove all bedding wastes from the north end of the berm located between the calf hutch area and LMU No. 5 and either properly dispose of the waste or relocate to a storage area located within the drainage area of the RCS;

   ii. Update the site map to depict the location of the two bermed silage storage areas;

   iii. Properly dispose of the barrels and containers that were removed from the pit located east of RCS No. 2; and

   iv. Remediate and properly dispose of the contaminated soils in the pit located east of RCS No. 2.

d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.c.i. through 2.c.iv., as described in Ordering Provision No. 2.k. below.

e. Within 60 days after the effective date of this Agreed Order:

   i. Remove the solids from the two settling basins and RCS No. 1 to restore the design capacity of the RCS system;

   ii. Obtain written agreements to allow nighttime application of manure, litter, or wastewater from all residents within one-quarter mile of LMUs where land application will occur during the time frame of one hour before sunset to one hour after sunrise;

   iii. Repair the north end of the berm located between the calf hutch area and LMU No. 5 and the two berms containing the silage storage areas; and

   iv. Obtain and maintain in the PPP a recharge feature certification signed and sealed by a licensed Texas professional engineer, or a licensed Texas professional geoscientist, which identifies the presence of all natural and artificial recharge features, in accordance with TPDES CAFO General Permit No. TXG920031, Part III.A.3.

f. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.e.i. through 2.e.iv., as described in Ordering Provision No. 2.k. below.

g. Within 90 days after the effective date of this Agreed Order:

   i. Repair the west embankment of RCS No. 1 to ensure the embankment is stabilized to prevent erosion or deterioration; and

ii. Replace the trench in the southwest corner of the embankment of RCS No. 1 with a pipe, as specified in the current design criteria or obtain certification from a licensed Texas professional engineer that the modification to the RCS is in accordance with the technical standards developed by the Natural Resources Conservation Service, American Society of Agricultural Engineers, American Society of Civil Engineers, or American Society of Testing Materials, in accordance with 30 TEX. ADMIN. CODE § 321.38(e).

h. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.g.i. and 2.g.ii., as described in Ordering Provision No. 2.k. below.

i. Within 120 days after the effective date of this Agreed Order, ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist conducts a site evaluation of the settling basins and the RCS system. The evaluation shall include certifications that the capacity and construction of the RCS system meets the design criteria, the west embankment is properly stabilized to prevent erosion or deterioration, and no significant hydrologic connection exists between the contained wastewater in RCS Nos. 1 and 2 and water in the state.

j. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.i., as described in Ordering Provision No. 2.k. below.

k. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.j. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director Date 1/21/2008

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

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

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

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

_____ 9-28-07
Signature Date

Ezequiel A. Tapia OWNER
Name (Printed or typed) Title
Authorized Representative of
Tapia Dairy #3, L.L.C.

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