

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0651-AGR-E TCEQ ID: RN102078649 CASE NO.: 37570**

**RESPONDENT NAME: Tapia Dairy, Inc.**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<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 checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Tapia Dairy 1, 215 Private Road 3921, Runnels County</p> <p><b>TYPE OF OPERATION:</b> Dairy</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 5, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Ezequiel Tapia, President, Tapia Dairy, Inc., 215 Private Road 3921, Miles, Texas 76861                  Mr. Ernie Tapia, Manager, Tapia Dairy, Inc., 215 Private Road 3921, Miles, Texas 76861  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 16, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 13, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine follow-up investigation.</p> <p><b>WATER</b></p> <p>Failure to ensure good drainage from the earthen calf pens. Specifically, contaminated runoff and wastewater were draining from the calf pens and then ponding on the east side of the pens outside of the retention control structures ("RCS") rather than draining into the RCS [30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG920973, Part II].A.6(c)(2) and 10(b)].</p>	<p><b>Total Assessed:</b> \$1,290</p> <p><b>Total Deferred:</b> \$258  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$0</p> <p>On or about March 5, 2009, the Respondent filed a petition for bankruptcy relief pursuant to Chapter 12 of the United States Code (remaining \$1,032 due pending outcome of bankruptcy proceedings).</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on February 19, 2009, berms were constructed to divert the wastewater from the calf pens to the RCS No. 2.</p>

Additional ID No(s): 0



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	17-Feb-2009	Screening	24-Mar-2009	EPA Due	
	PCW	24-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Tapia Dairy, Inc.
Reg. Ent. Ref. No.	RN102078649
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37570	No. of Violations	1
Docket No.	2009-0651-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 1
Maximum	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation-base penalties)</b>		<b>Subtotal 1:</b>	<b>\$1,000</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
<b>Compliance History</b>	39.0% Enhancement	<b>Subtotals 2, 3, &amp; 7:</b>	<b>\$390</b>
Notes	The Respondent has received two NOVs without same or similar violations and was issued an order without a denial of liability. Additionally, the Respondent is classified as a Poor Performer.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4:</b>	<b>\$0</b>
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5:</b>	<b>\$100</b>
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6:</b>	<b>\$0</b>
Total EB Amounts	\$7	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$1,000		
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal:</b>	<b>\$1,290</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		0.0% Adjustment	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
<b>Final Penalty Amount</b>			<b>\$1,290</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>			<b>Final Assessed Penalty</b>
			<b>\$1,290</b>
<b>DEFERRAL</b>		20.0% Reduction Adjustment	-\$258
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)			
Notes	Deferral offered for expedited settlement.		
<b>PAYABLE PENALTY</b>			<b>\$1,032</b>

**Screening Date:** 24-Mar-2009

**Docket No.:** 2009-0651-AGR-E

**PCW**

**Respondent:** Tapia Dairy, Inc.

Policy Revision 2 (September 2002)

**Case ID No.:** 37570

PCW Revision October 30, 2008

**Reg. Ent. Reference No.:** RN102078649

**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 (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
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%
<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)** 29%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent has received two NOVs without same or similar violations and was issued an order without a denial of liability. Additionally, the Respondent is classified as a Poor Performer.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 39%

<b>Screening Date</b>	24-Mar-2009	<b>Docket No.</b>	2009-0651-AGR-E	<b>PCW</b>
<b>Respondent</b>	Tapia Dairy, Inc.	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	37570	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN102078649			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Merrilee Hupp			

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1) and General Permit No. TXG920973, Part III.A.6(c)(2) and 10(b)

**Violation Description**  
 Failed to ensure good drainage from the earthen calf pens. Specifically, contaminated runoff and wastewater were draining from the calf pens and then ponding on the east side of the pens outside of the retention control structure ("RCS") rather than draining into the RCS, as documented during the investigation on January 16, 2009.

**Base Penalty**

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

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

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**  
 Human health or the environment will or could be exposed to significant amounts of pollutants as a result of the violation.

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

**Violation Base Penalty**

One quarterly event is recommended from investigation date (January 16, 2009) to date of compliance (February 19, 2009).

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input checked="" type="checkbox"/>
N/A	(mark with x)	
Notes	On February 19, 2009, berms were constructed to divert the wastewater from the calf pens to RCS No. 2.	

**Violation Subtotal**

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

**Estimated EB Amount**       **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

**Respondent:** Tapla Dairy, Inc.

**Case ID No.:** 37570

**Reg. Ent. Reference No.:** RN102078649

**Media:** Water Quality

**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,000	16-Jan-2009	19-Feb-2009	0.09	\$0	\$6	\$7
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with the construction of berms to divert the wastewater from the calf pens to an RCS.  
Date required is the investigation date and final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$7

## Compliance History Report

Customer/Respondent/Owner-Operator: CN600724116 Tapia Dairy, Inc. Classification: POOR Rating: 51.32  
Regulated Entity: RN102078649 TAPIA DAIRY 1 Classification: AVERAGE Site Rating: 23.33  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920973  
Location: 215 PRIVATE ROAD 3921, Runnels Co., TX, 76861  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: May 05, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 05, 2004 to May 05, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Merrilee Hupp Phone: 239 - 4490

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OPR Tapia Dairy, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? OPR TAPIA, DORA  
OPR TAPIA, EZEQUIEL  
OWN Tapia Dairy, Inc.
5. When did the change(s) in owner or operator occur? 09/01/2004 OWN Tapia Dairy, Inc.  
08/31/2007 OPR TAPIA, DORA  
OPR TAPIA, EZEQUIEL
6. Rating Date: 9/1/2008 Repeat Violator: NO

### 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: 09/21/2007 ADMINORDER 2007-0265-WQ-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Rqmt Prov: TXG92033 PERMIT

Description: Failure to prevent the discharge of wastewater into or adjacent to any water in the State.

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 06/08/2006 (481711)

2 11/30/2007 (599913)

3 02/13/2009 (724047)

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

Date: 07/07/2005 (397850)

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state.

Self Report? NO Classification: Minor

Citation: Standard Permit Conditions (D), page 51 PERMIT

Description: Failure to maintain the berm of the tailwater control structure.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Standard Permit Conditions (E), page 51 PERMIT

Description: Failure to have the pollution prevention plan available onsite during the investigation.

Date: 04/07/2006 (458639)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

General Permit No. TXG920033 OP

Description: Failure to provide a recharge feature certification .

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

General Permit No. TXG920033 OP

Description: Failure to provide a site evaluation showing that all control facilities are located outside of the 100-year floodplain or protected from inundation and damage that may occur during the flood

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

General Permit No. TXG920033 OP

Description: Failure to remove sludge from the RCS(s) in accordance with the design schedule.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

General Permit No. TXG920033 OP

Description: Failure to have a licensed Texas professional engineer, or a licensed Texas professional geoscientist conduct a site evaluation every five years and re-certify pond liners.

Self Report? NO Classification: Minor

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent the unauthorized discharge of wastewater (8/18/2005) into or adjacent to any water in the state.

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  
TAPIA DAIRY, INC.  
RN102078649**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0651-AGR-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, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy at 215 Private Road 3921 in Runnels County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of agricultural waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 18, 2009.
5. 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.
6. An administrative penalty in the amount of One Thousand Two Hundred Ninety Dollars (\$1,290) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). On or about March 5, 2009, the Respondent filed a petition for bankruptcy relief

pursuant to Chapter 12 of the United States Code. The Automatic Stay imposed by the Federal Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 USC § 101 (27)) is expressly excepted from the automatic stay in pursuing enforcement of the State's Environmental Protection Laws, and in seeking to liquidate its damages for such violations. So long as the Debtor's bankruptcy proceedings are pending and/or until relief from the automatic stay is granted, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Debtor's bankruptcy case is pending as necessary, after consultation with the Office of the Attorney General. Two Hundred Fifty-Eight Dollars (\$258) may be deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. Any deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty upon approval by the bankruptcy court.

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 the Respondent 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 on February 19, 2009, berms were constructed to divert the wastewater from the calf pens to the retention control structure ("RCS") No. 2.
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 the Respondent 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 owner and operator of the Facility, the Respondent is alleged to have failed to ensure good drainage from the earthen calf pens, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and General Permit No. TXG920973, Part III.A.6(c)(2) and 10(b), as documented during an investigation conducted on January 16, 2009. Specifically, contaminated runoff and wastewater were draining from the calf pens and then ponding on the east side of the pens outside of the RCS rather than draining into the RCS.

### 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 be assessed an administrative penalty as set forth in Section I, Paragraph 6 above. The assessment 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 may be made payable to "TCEQ" and sent with the notation "Re: Tapia Dairy, Inc., Docket No. 2009-0651-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. 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.
3. 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.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. 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

John Srollin  
\_\_\_\_\_  
For the Executive Director

9/18/09  
\_\_\_\_\_  
Date

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 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;
  - 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.

Ezequiel A. Tapia  
\_\_\_\_\_  
Signature

September 18, 2009  
\_\_\_\_\_  
Date

Ezequiel A. Tapia  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Tapia Dairy, Inc.

President  
\_\_\_\_\_  
Title

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