

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0974-AGR-E **TCEQ ID:** RN102792694 **CASE NO.:** 39872

**RESPONDENT NAME:** James Rodriguez dba Rioseco Dairy

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Rioseco Dairy, located at the end of Duckworth Road, approximately 1.25 miles north from the intersection of Duckworth Road and United States Highway 67, Harriet, Tom Green County</p> <p><b>TYPE OF OPERATION:</b> Dairy operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on February 8, 2010, alleging runoff from the Facility was flowing into two downstream ponds. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 29, 2010. 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. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. James M. Rodriguez, Owner, Rioseco Dairy, 8317 Duckworth Road, San Angelo, Texas 76905  <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 checked="" type="checkbox"/> Complaint  <input 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> February 8, 2010</p> <p><b>Date of Investigation Relating to this Case:</b> March 10, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 7, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event. Specifically, three open lots used for heifer pens were not in the drainage area of the retention control structure ("RCS"), the south end of pen 1 drained south to a grassy swale rather than northeast to the RCS, and the compost area and the silage storage pile, unprotected from rainfall or runoff, were also not in the drainage area of the RCS [30 TEX. ADMIN. CODE §§ 321.36(c) and 321.39(f) and TCEQ General Permit No. TXG920888, Part III.B.4 and Part V.D].</p> <p>2) Failed to maintain a log of manure given to other persons for off-site land application. Specifically, in early 2009, several truckloads of eight to ten tons of manure each, resulting from cleaning of the pens, were given away and used for land application off-site, and a log was not maintained [30 TEX. ADMIN. CODE. § 321.36(e)(2) and TCEQ General Permit No. TXG920888, Part IV.A.(2)(b)(2)].</p> <p>3) Failed to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event.</p>	<p><b>Total Assessed:</b> \$4,955</p> <p><b>Total Deferred:</b> \$991  <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 (Due) to General Revenue:</b> \$202 (remaining \$3,762 due in 22 monthly payments of \$171 each)</p> <p><b>Compliance History Classification:</b>                  Person/CN – High                  Site/RN – High</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 the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. By March 11, 2010, constructed berms at the southeast corner of the RCS and the northeast corner of the dry cow pen, moved heifers from the northeast open lot, and began removing wastewater from the RCS to stop the unauthorized discharge of wastewater from a pond into Sales Branch and a downstream pool;</p> <p>b. By March 11, 2010, collected and properly disposed of the cattle carcass parts from the LMU;</p> <p>c. On June 11, 2010, submitted a log to the TCEQ of manure given to other persons for off-site land application; and</p> <p>d. On July 28, 2010 sold all remaining cattle, including heifers in preparation for selling the Facility.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Build up or repair berm at south end of pen 1 and move compost area and silage pile to ensure that the RCS at the Facility contains all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event;</p> <p>ii. Develop and implement procedures to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event;</p> <p>iii. Equip the RCS with irrigation or liquid removal systems capable of dewatering the RCS whenever needed to restore the operating capacity; and</p>

<p>Specifically, the required capacity as indicated on the pond marker and the weekly marker reading records had not been maintained [30 TEX. ADMIN. CODE § 321.39(b) and TCEQ General Permit No. TXG920888, Part III.A.9.(a)].</p> <p>4) Failed to equip the RCS with irrigation, or liquid removal systems capable of dewatering the RCS whenever needed to restore the operating capacity [30 TEX. ADMIN.CODE § 305.125(1) and TCEQ General Permit No. TXG920888, Part III.A.6.(e)].</p> <p>5) Failed to prevent an unauthorized discharge of wastewater and contaminated runoff into water in the state. Specifically, evidence of an unauthorized discharge from a pond which discharges into Sales Branch and a downstream pool revealed that runoff from one of the three open lots being used as heifer pens, wastewater from the southeast corner of the RCS, and runoff from the dry cow pen had flowed into the pond [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 321.31(a), and TCEQ General Permit No. TXG920888, Part III.A.5(a)(1)].</p> <p>6) Failed to collect carcasses within 24 hours of death. Specifically, parts of a cattle carcass were documented on the surface of one of the land management units ("LMUs") [30 TEX. ADMIN. CODE § 321.36(l) and TCEQ General Permit No. TXG920888, Part III.A.10(c)].</p> <p>7) Failed to notify the TCEQ orally within 24 hours and in writing within 14 days of becoming aware of an unauthorized discharge. Specifically, evidence of an unauthorized discharge was described in the Notice of Enforcement dated May 7, 2010, and neither oral nor written notification was received [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ General Permit No. TXG920888, Part IV.B.5].</p>		<p>iv. Develop and implement procedures to ensure oral and written notifications are provided to the TCEQ for any unauthorized discharge of wastewater.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i, ii, iii, and iv.</p>
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Additional ID No(s): TXG920888





# Penalty Calculation Worksheet (PCW)

DATES	Assigned	10-May-2010	Screening	3-Jun-2010	EPA Due	
	PCW	8-Jun-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	James Rodriguez dba Rioseco Dairy		
Reg. Ent. Ref. No.	RN102792694		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39872	No. of Violations	7
Docket No.	2010:0974-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$5,600
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<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>	10.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> -\$560

Notes: Reduction for High Performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$135
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$211	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$2,544		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,905
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	1.0%	<b>Adjustment</b>	\$50
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Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes: Enhancement to recover avoided costs associated with Violation No. 7.

<b>Final Penalty Amount</b>	\$4,955
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,955
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$991
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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>	\$3,964
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Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rioseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

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	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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) -10%

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rioseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Menilee Hupp

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 321.36(c) and 321.39(f) and Texas Commission on Environmental Quality ("TCEQ") General Permit No. TXG920888, Part III.B.4 and Part V.D

Violation Description

Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event, as documented during the March 10, 2010 investigation. Specifically, three open lots used for heifer pens were not in the drainage area of the retention control structure ("RCS"), the south end of pen 1 drained south to a grassy swale rather than northeast to the RCS; and the compost area and the silage storage pile, unprotected from rainfall or runoff, were also not in the drainage area of the RCS.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	Potential		X		

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 85

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 10, 2010 investigation date to the June 3, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

## Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792694  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$600	10-Mar-2010	15-Jan-2011	0.85	\$26	n/a	\$26
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to build up berms and diversions, remove heifers from pen areas that do not drain into the RCS, and protect or remove compost and silage piles. Date required is the investigation date and the final date is the date compliance is expected to be achieved.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [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

\$600

TOTAL

\$26

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rioseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 321.36(e)(2) and TCEQ General Permit No. TXG920888, Part IV.A.(2)(b)(2)

Violation Description

Failed to maintain a log of manure given to other persons for off-site land application, as documented during the March 10, 2010 investigation. Specifically, in early 2009, several truckloads of eight to ten tons of manure each, resulting from cleaning of the pens, were given away and used for land application off-site, and a log was not maintained.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
			x	1%

Matrix Notes

70% of the record-keeping requirements for land application or removal from the Facility was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 35 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$10

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

Notes The Respondent submitted compliance documentation on June 11, 2010.

Violation Subtotal \$90

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$81

This violation Final Assessed Penalty (adjusted for limits) \$81

# Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy

**Case ID No.:** 39872

**Reg. Ent. Reference No.:** RN102792694

**Media:** Water Quality

**Violation No.:** 2

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

<b>Item Description</b>	<b>Item Cost</b>	<b>Date Required</b>	<b>Final Date</b>	<b>Yrs</b>	<b>Interest Saved</b>	<b>Ongoing Costs</b>	<b>EB Amount</b>
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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$50	10-Mar-2010	11-Jun-2010	0.25	\$1	n/a	\$1
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 of compiling and recording information on a form when manure is given away or sold for off-site land application. Date required is the investigation date and the final date is the date compliance was achieved.

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [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

\$50

**TOTAL**

\$1

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rioseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 321.39(b) and TCEQ General Permit No. TXG920888, Part III.A.9.(a)

Violation Description

Failed to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event, as documented during the March 10, 2010 investigation. Specifically, the required capacity as indicated on the pond marker and the weekly marker reading records had not been 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

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

86 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 10, 2010 investigation date to the June 3, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$104

Violation Final Penalty Total \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

## Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792894  
**Media:** Water Quality  
**Violation No.:** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment	\$1,044	12-Aug-2009	15-Jan-2011	1.43	\$5	\$99	\$104
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost of renting a pump for removal of wastewater from the RCS to restore its required capacity. Date required is the date the RCS first exceeded the marker level indicating pumping was required, and the final date is the expected date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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

\$1,044

**TOTAL**

\$104

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rioseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TCEQ General Permit No. TXG920888, Part III.A.8.(e)

Violation Description Failed to equip the RCS with irrigation, or liquid-removal systems capable of dewatering the RCS whenever needed to restore the operating capacity, as documented during the March 10, 2010 investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 85

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 10, 2010 investigation date to the June 3, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

# Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792694  
**Media:** Water Quality  
**Violation No.:** 4

Percent Interest	Years of Depreciation:
5.0	15

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

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

Economic benefit is covered in Violation No. 3.

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [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

\$0

**TOTAL**

\$0

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodríguez dba Riosoco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 5

Rule Cite(s) Tex. Water Code § 26.121(a)(1); 30 Tex. Admin. Code § 321.31(a), and TCEQ General Permit No. TXG920888 Part III A5(a)(1)

Violation Description

Failed to prevent an unauthorized discharge of wastewater and contaminated runoff into water in the state, as documented during the March 10, 2010 investigation. Specifically, evidence of an unauthorized discharge from a pond which discharges into Sales Branch and a downstream pool revealed that runoff from one of the three open lots being used as heifer pens, wastewater from the southeast corner of the RCS, and runoff from the dry cow pen had flowed into the pond.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			x	10%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

## Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792694  
**Media:** Water Quality  
**Violation No.:** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	One-time Costs	EB Amount
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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$600	10-Mar-2010	15-Jan-2011	0.85	\$26	n/a	\$26

Notes for DELAYED costs

Estimated cost for labor to construct berms to prevent an unauthorized discharge. Economic benefit of removing wastewater from the RCS to prevent an unauthorized discharge is covered under Violation No. 3, and the economic benefit of removing heifers from the open lot is covered under Violation No. 1. Date required is the date the violation was documented, and the final date is the expected date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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

\$600

**TOTAL**

\$26

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent James Rodriguez dba Rloseco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792694

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code §.321.36(l) and TCEQ General Permit No. TXG920886, Part III.A.10(c)

Violation Description Failed to collect carcasses within 24 hours of death; as documented during the March 10, 2010 investigation. Specifically, parts of a cattle carcass were documented on the surface of one of the land management units ("LMUs").

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

	1	1	Number of violation days
mark only one with an x	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	X	

Violation Base Penalty \$500

One single event is recommended based on the March 10, 2010 investigation date.

Good Faith Efforts to Comply

25.0% Reduction

\$125

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

Notes The Respondent achieved compliance by March 11, 2010.

Violation Subtotal \$375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$328

This violation Final Assessed Penalty (adjusted for limits) \$328

# Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rioseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792694  
**Media:** Water Quality  
**Violation No.:** 6

Percent Interest	Years of Depreciation
6.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$50	10-Mar-2010	11-Mar-2010	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 for removal of cattle carcass(es) from the LMU. Date required is the investigation date and the final date is the date compliance was achieved.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [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

\$50

TOTAL

\$0

Screening Date 3-Jun-2010

Docket No. 2010-0974-AGR-E

PCW

Respondent: James Rodriguez dba Riosaco Dairy

Policy Revision 2 (September 2002)

Case ID No. 39872

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102792894

Media [Statute] Water Quality

Enf. Coordinator: Merrilee Hupp

Violation Number

7

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and TCEQ General Permit No. TXG920888, Part IV.B.5.

Violation Description:

Failed to notify the TCEQ orally within 24 hours and in writing within 14 days of becoming aware of an unauthorized discharge. Specifically, evidence of an unauthorized discharge was described in the Notice of Enforcement dated May 7, 2010, and neither oral or written notification was received.

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 requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

1

85 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$55

Violation Final Penalty Total \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

## Economic Benefit Worksheet

**Respondent:** James Rodriguez dba Rloseco Dairy  
**Case ID No.:** 39872  
**Reg. Ent. Reference No.:** RN102792694  
**Media:** Water Quality  
**Violation No.:** 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$150	8-May-2010	15-Jan-2011	0.69	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost for the development and implementation of procedures to ensure oral and written notices are provided to TCEQ for any unauthorized discharge. Date required is when the first (oral) notification was due following the May 7, 2010 Notice of Enforcement and the final date is the anticipated 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)	\$50	8-May-2010	21-May-2010	0.00	\$0	\$50	\$50
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for providing oral and written notification of an unauthorized discharge. Date required is when the first (oral) notification was due following the May 7, 2010 Notice of Enforcement and the final date is the due date of the written notice.

Approx. Cost of Compliance

\$200

TOTAL

\$55

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603144627 RODRIGUEZ, JAMES MICHAEL Classification: HIGH Rating: 0.00  
Regulated Entity: RN102792694 RIOSECO DAIRY Classification: HIGH Site Rating: 0.00  
ID Number(s): WASTEWATER AGRICULTURE PERMIT TXG920888  
Location: End of DUCKWORTH RD, APPROX. 1.25 MI. N. FROM  
INTERSEC. OF DUCKWORTH RD. & US HWY. 67, HARRIET,  
Tom Geen Co., TX.  
TCEQ Region: REGION 08 - SAN ANGELO  
Date Compliance History Prepared: June 16, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 16, 2005 to June 16, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Merrilee G. Hupp Phone: 512-239-4490

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2009 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.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
06/26/2006 (341477)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JAMES RODRIGUEZ DBA  
RIOSECO DAIRY  
RN102792694

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2010-0974-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 James Rodriguez dba Rioseco Dairy ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a dairy operation located at the end of Duckworth Road, approximately 1.25 miles north from the intersection of Duckworth Road and United States Highway 67 in Harriet, Tom Green County, Texas (the "Facility").
2. The Respondent has discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 May 12, 2010.
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 Four Thousand Nine Hundred Fifty-Five Dollars (\$4,955) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Two Dollars (\$202) of the administrative penalty and Nine Hundred Ninety-One Dollars (\$991) 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 Three Thousand Seven Hundred Sixty-Two Dollars (\$3,762) of the administrative penalty shall be payable in 22 monthly payments of One Hundred Seventy-One Dollars (\$171) 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.

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 the Respondent has implemented the following corrective measures at the Facility:
  - a. By March 11, 2010, constructed berms at the southeast corner of the retention control structure ("RCS") and the northeast corner of the dry cow pen, moved heifers from the northeast open lot, and began removing wastewater from the RCS to stop the unauthorized discharge of wastewater from a pond into Sales Branch and a downstream pool;
  - b. By March 11, 2010, collected and properly disposed of the cattle carcass parts from the land management unit ("LMU");
  - c. On June 11, 2010, submitted a log to the TCEQ of manure given to other persons for off-site land application; and
  - d. On July 28, 2010 sold all remaining cattle, including heifers in preparation for selling the Facility.
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:

1. Failed to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event, in violation of 30 TEX. ADMIN. CODE §§ 321.36(c) and 321.39(f) and TCEQ General Permit No. TXG920888, Part III.B.4 and Part V.D, as documented during an investigation conducted on March 10, 2010. Specifically, three open lots used for heifer pens were not in the drainage area of the RCS, the south end of pen 1 drained south to a grassy swale rather than northeast to the RCS, and the compost area and the silage storage pile, unprotected from rainfall or runoff, were also not in the drainage area of the RCS.
2. Failed to maintain a log of manure given to other persons for off-site land application, in violation of 30 TEX. ADMIN. CODE. § 321.36(e)(2) and TCEQ General Permit No. TXG920888, Part IV.A.(2)(b)(2), as documented during an investigation conducted on March 10, 2010. Specifically, in early 2009, several truckloads of eight to ten tons of manure each, resulting from cleaning of the pens, were given away and used for land application off-site, and a log was not maintained.
3. Failed 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 TCEQ General Permit No. TXG920888, Part III.A.9.(a), as documented during an investigation conducted on March 10, 2010. Specifically, the required capacity as indicated on the pond marker and the weekly marker reading records had not been maintained.
4. Failed to equip the RCS with irrigation, or liquid removal systems capable of dewatering the RCS whenever needed to restore the operating capacity, in violation of 30 TEX. ADMIN.CODE § 305.125(1) and TCEQ General Permit No. TXG920888, Part III.A.6.(e), as documented during an investigation conducted on March 10, 2010.
5. Failed to prevent an unauthorized discharge of wastewater and contaminated runoff into water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 321.31(a), and TCEQ General Permit No. TXG920888, Part III.A.5(a)(1), as documented during an investigation conducted on March 10, 2010. Specifically, evidence of an unauthorized discharge from a pond which discharges into Sales Branch and a downstream pool revealed that runoff from one of the three open lots being used as

heifer pens, wastewater from the southeast corner of the RCS, and runoff from the dry cow pen had flowed into the pond.

6. Failed to collect carcasses within 24 hours of death, in violation of 30 TEX. ADMIN. CODE § 321.36(l) and TCEQ General Permit No. TXG920888, Part III.A.10(c), as documented during an investigation conducted on March 10, 2010. Specifically, parts of a cattle carcass were documented on the surface of one of the LMUs.
7. Failed to notify the TCEQ orally within 24 hours and in writing within 14 days of becoming aware of an unauthorized discharge, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ General Permit No. TXG920888, Part IV.B.5, as documented during an investigation conducted on March 10, 2010. Specifically, evidence of an unauthorized discharge was described in the Notice of Enforcement dated May 7, 2010, and neither oral nor written notification was received.

### 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 6 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: James Rodriguez dba Rioseco Dairy, Docket No. 2010-0974-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Build up or repair berm at south end of pen 1 and move compost area and silage pile to ensure that the RCS at the Facility contains all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event, in accordance with 30 TEX. ADMIN. CODE § 321.36(c) and TCEQ General Permit No. TXG920888, Part III.B.4 and Part V.D;

- ii. Develop and implement procedures to ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the required rainfall event, in accordance with 30 TEX. ADMIN. CODE § 321.39(b) and TCEQ General Permit No. TXG920888, Part III.A.9.(a);
  - iii. Equip the RCS with irrigation or liquid removal systems capable of dewatering the RCS whenever needed to restore the operating capacity, in accordance with TCEQ General Permit No. TXG920888, Part III.A.6.(e); and
  - iv. Develop and implement procedures to ensure oral and written notifications are provided to the TCEQ for any unauthorized discharge of wastewater, in accordance with TCEQ General Permit No. TXG920888, Part IV.B.5.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i, ii, iii, and iv. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager  
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 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.
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

12/21/2010  
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 and/or failure to timely pay the penalty amount, may result in:

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

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

  
Signature

12/18/10  
Date

James Rodriguez  
Name (Printed or typed)  
Authorized Representative of  
James Rodriguez dba Rioseco Dairy

Owner  
Title

**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.

