Page 1 of 2

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1220-WQ-E **TCEQ ID:** RN104535356 **CASE NO.:** 30804

RESPONDENT NAME: Texas Department of Transportation

ORDER TYPE:			
X 1660 AGREED ORDER	FINDINGS AGREED ORDER	AMENDED ORDER	IMMINENT AND SUBSTANTIAL
_SHUTDOWN ORDER	FINDINGS DEFAULT ORDER	_EMERGENCY ORDER	ENDANGERMENT ORDER
CASE TYPE:			
AGRICULTURE	AIR	INDUSTRIAL AND HAZARDOUS WASTE	MUNICIPAL SOLID WASTE
_OCCUPATIONAL CERTIFICATION	PETROLEUM STORAGE TANKS	PUBLIC WATER SUPPLY	RADIOACTIVE WASTE
MULTI-MEDIA (check all that apply)	SEWAGE SLUDGE	UNDERGROUND INJECTION CONTROL	USED OIL
USED OIL FILTER	X WATER QUALITY		
SITE WHERE VIOLATION(S) OC TYPE OF OPERATION: Construction	·	States Highway 59 to 2.6 miles north and west of	Farm-to-Market Road 2435, Nacogdoches Count
SMALL BUSINESS: Yes	X No		
	*	6, for allegedly failing to prevent sediment from disorcement actions regarding this facility location.	scharging off a construction site on Farm-to-Marke
INTERESTED PARTIES: No one of	her than the ED and the Respondent has ex	pressed an interest in this matter.	
COMMENTS RECEIVED: The Texa	as Register comment period expired on Ma	rch 19, 2007. No comments were received.	
	inator: Ms. Melissa Keller, Enforcement I		71; Mr. Steven Lopez, Enforcement Division, MC
Mr. Michael W.	Behrens, Executive Director, Texas Depart	ransportation, 918 Industrial Boulevard, Nacogdertment of Transportation, 918 Industrial Boulevar	
Respondent's Attorney: Not	represented by counsel on this enforcemen	ii Ilialici	and the second s

RESPONDENT'S NAME: Texas Department of Transportation DOCKET NO.: 2006-1220-WQ-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: X Complaint Routine Enforcement Follow-up Records Review	Total Assessed: \$1,050	Corrective Actions Taken:
Date of Complaint Relating to this Case: May 30, 2006	Total Deferred: \$210 X Expedited Settlement	The Executive Director recognizes that TXDOT began installing and maintaining erosion and sediment control structures, the seeding of grass cover along the creek banks, and the removal of
Date of Investigation Relating to this Case: June 1, 2006 Date of NOE Relating to this Case: July 27, 2006 (NOE)	Financial Inability to Pay SEP Conditional Offset: \$840	accumulated sediments from existing BMP structures in the area of Naconiche Creek on June 8, 2006.
Background Facts: This was a complaint investigation. Three	Total Paid (Due) to General Revenue: \$0	Ordering Provisions:
violations were documented. WATER	Site Compliance History Classification:High _X_AvgPoor	The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A).
1) Failed to maintain the Best Management Practice ("BMP") structures [30 Tex. ADMIN. CODE § 281.25(a)(4), 40 CODE OF	Person Compliance History Classification:High _X_AvgPoor Major Source:Yes _X_No	3) The Order will also require the Respondent to:
FEDERAL REGULATIONS § 122.26(a) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000 Part III Section F(2)(a)(iii) and Tex. WATER CODE	Applicable Penalty Policy: September 2002	a. Immediately cease all discharge of sediments from the Site; b. Within 30 days after the effective date of this Agreed Order:
§ 26.121(d)]. 2) Failed to install BMP structures in the area of Naconiche	kan di kacamatan di Kabupatèn Bandaran Kabupatèn Kabupatèn Kabupatèn Kabupatèn Kabupatèn Kabupatèn Kabupatèn K Kabupatèn Kabupatèn	i. Complete the removal of accumulated silt from existing BMP structures; and
Creek [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a) and TPDES General Permit No. TXR150000 Part III Section F(2)(a)(ii)].		ii. Complete the installation of BMP structures to properly control soil erosion and sediment discharges.
3) Failed to prevent the unauthorized discharge of sediment into		c. Within 45 days after the effective date of this Agreed Order,
the waters in the state [Tex. WATER CODE § 26.121(d)].		remove and properly dispose of soil sediment from the area of Naconiche Creek; and
	manus de la communicación de la composition della composition dell	dWithin 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 3.a. through 3.c. The certification shall include detailed
		supporting documentation including receipts, photographs and/or other records to demonstrate compliance.
		The second secon

Attachment A Docket Number: 2006-1220-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Texas Department of Transportation

Payable Penalty Amount: Eight Hundred Forty Dollars (\$840)

SEP Amount: Eight Hundred Forty Dollars (\$840)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and Development

Areas, Inc. ("RC&D")- Wastewater Treatment Assistance

Location of SEP: Nacogdoches County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. <u>Minimum Expenditure</u>

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

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Texas Department of Transportation Agreed Order - Attachment A

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. 1716 Briarcrest Drive
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division Attention: SEP Coordinator, MC 219 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

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6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

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Page 1 of		6-1220-WQ\pcw.wb3	
	Penalty Calculation Worksheet (PCW)		
Policy Revision 2 (PCW Revision May 19	9, 2005
TCEQ	The state of the s		
DATES Assigned	31-Jul-2006		
PCW	11-Aug-2006		DECLERATION OF THE PARTY.
RESPONDENT/FACIL	ITY INFORMATION		
	Texas Department of Transportation		
Reg. Ent. Ref. No.			
Facility/Site Region		Minor Source	<
,			
CASE INFORMATION			
Enf./Case ID No.			
	2006-1220-WQ-E Order Type		
Media Program(s)	Water Quality < Enf. Coordinator		
Multi-Media	Land to the state of the state	Enforcement Team 1	
Admin. Penalty \$ Li	mit Minimum \$0 Maximum \$10,000		nema en ma en carro (d. 1912 - 191
	Penalty Calculation Section		
· · · · · · · · · · · · · · · · · · ·	- Change Canada Can		
TOTAL BASE PEN	NALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
AD HISTMENITS /	-/-) TO SUBTOTAL 1		
· ·	obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance H		otals 2, 3, & 7	\$50
Notes	The Respondent received one Commission issued NOV with same or similar violations as those cited in this action.	•	
	Similar violations as those cited in this action.		
Culpability	No < 0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does not meet culpability criteria.		
l			
Good Eaith Et	ffort to Comply 0% Reduction	Subtotal 5	\$0
Good Faith Ei	Before NOV NOV to EDPRP/Settlement Offer	Oubtotui o	Ψ0
Extraordinary	Deficiency (10 CEST 14) Joseph Mills Grid		
Ordinary			
N/A	X (mark with a small x)	_	
Natao	The Respondent does not meet the good faith criteria.		
Notes	The Respondent does not meet the good faith chiena.		
· · · · · · · · · · · · · · · · · · ·			
Economic Be		Subtotal 6	\$0
1	Total EB Amounts \$249 *Capped at the Total EB \$ Amount		
Approx. Co	ost of Compliance \$6,000		
SUM OF SUBTOT	ALC 17	Final Subtotal	\$1,050
SOM OF SUBTOT	ALS 1-7	i illai oubtotai	Ψ1,000
OTHER FACTORS	S AS JUSTICE MAY REQUIRE	Adjustment	\$0
	inal Subtotal by the indicated percentage. (Enter number only; e.g30 for -30%.)		
]	
Notes			
1 .	Final Pe	enalty Amount	\$1,050
1			A
STATUTORY LIM	IT ADJUSTMENT Final Ass	essed Penalty	\$1,050
DECEDRAL	200/ Daduckin	Adjustment	-\$210
DEFERRAL Bodyses the Finel Assesse	d Reposits by the indicted perceptage. (Enter number only e.g. 20 for 20% reduction.)	Aujustineiit	-φ∠10
Reduces the Final Assesse	d Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)	7	
Notes	Deferral offered for expedited settlement.		
The second second			

PAYABLE PENALTY

\$840

Screening Date 10-Aug-2006 Docket No. 2006-1220-WQ-E

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002) PCW Revision May 19, 2005

Case ID No. 30804

Reg. Ent. Reference No. RN104535356

Media [Statute] Water Quality

Enf. Coordinator Ruben Soto

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component		Vumber 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%	İ
and the state of t	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%	
Orders	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	0	0%	
Line of the second second points	commission (80,75) and the commission			1.000
Judgments and	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%	Pass I(. (17)
Consent Decrees	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial	0	0%	1
Dedices	of liability, of this state or the federal government		070	
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%	1.
A 111	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	0	0%	
Audits	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%	. /
and the second s		ter Yes or No	de constitue de la constitue d	
	Environmental management systems in place for one year or more	No	0%	1
Other	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%	
Outer	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%	

		federal govern	nment environ	mental requirem	ents	TRANSPORTED THE OPERATOR AND A COMMISSION OF THE OPERATOR AND A COMISSION OF THE OPERATOR AND A COMMISSION OF THE OPERATOR AND A COM	INO	070	
-		*	1.45 1	er i de la companya	Adjustr	nent Percer	rtage (Su	btotal 2)	5%
>> R	epeat Violator	(Subtotal 3)				€ A			
	No				Adjustr	nent Percer	itage (Su	btotal 3)	0%
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.	Compliance History Notes				issued NOV witl I in this action.			s as those	\$ 4 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -
2.5			Tot	al Adiuetm	ent Percen	tago (Sub	totale 2	3 & 7)	50/

Scree	ening Date	10-Aug-2006	Docket No.	2006-1220-WQ-E		PCW
Re	espondent	Texas Department of Trans	portation		Policy Revision	n 2 (September 2002)
С	ase ID No.	30804			PCW R	evision May 19, 2005
Reg. Ent. Refe	erence No.	RN104535356				
		Water Quality		•		
	oordinator	Ruben Soto				
Viola	tion Number	1			<u> </u>	
		30 Tex. Admin. Code § 28 Code of Federal Regulation TXR150000 I	ns § 122.26(a)	tas Water Code § 26. and TPDES General F(2)(a)(ii) and (iii).	121(d), 40 Permit No.	
	Rule Cite(s)					
Secondary	Rule Cite(s)					
Violation	n Description	BMP structures, and also area of Naconiche Cree amounts of sediment disc	er and failure to uthorized disch ne investigator sediment that n observed that s k. The investig narging into Na	install BMP structure narge of sediments into observed at multiple a eeded to be removed soil erosion was occurator also observed versions.	s in areas o waters of areas an from the ring in the ery small	
				Ва	se Penalty	\$10,000
					-	
>> Environ	mental, Pr	operty and Human Hea	alth Matrix			
	Dalaaaa	Harm				
OR	Release Actual		7			
	Potential			Percent 10%	6	
						14
>> Progran	nmatic Mat	rix				
	Falsification	Major Moderate Min	or	Davaont	¬	
	L			Percent		
Matrix No	the s	g to prevent the unauthorized state, human health or the er icant amounts of pollutants v ve of human health or enviro violat	ivironment has which do not ex nmental recept	been exposed to sceed levels that are		The control of the co
				Adjustmen	-\$9,000	
				, . ,	+=,	
				Base Pena	Ity Subtotal	\$1,000
Violatio	n Events					TO TOWNSHIP AND THE STATE OF TH
Nι	ımber of Viola	tion Events 1				Particular and American Americ
	mark only on use a small	· · · · · · · · · · · · · · · · · · ·		Violation B	ase Penalty	\$1,000
	One qu	arterly event is recommende June 1, 2006 to the screenir	d based on the ng date of Augu	e investigation date of ust 10, 2006.		
Econor	nic Benefit	(EB) for this violation		Statutory Limit	Test	-
		EB Amount \$249		Violation Final P	enalty Total	\$1,050
		This violatio	n Final Asses	sed Penalty (adjuste	d for limits)	\$1,050

H:\Agreed Orders\TexasDepartmentofTransportation-2006-1220-WQ\pcw.wb3

Page 3 of 4 03/20/07

Economic Benefit Worksheet

Respondent Texas Department of Transportation

Case ID No. 30804
Reg. Ent. Reference No. RN104535356

Reg. Ent. Reference No. Medla [Statute] Violation No.	Water Quality			v	arti vierbiti i i i si i i i i i atsali t sa i i i i i i ka li s	Percent Interest D 5.0	Years of epreciation 15
	Item	Date	Final	Yrs	Interest	Qnetime	ЕВ
ltem	Cost	Required	Date		Saved	Costs	Amount
Description	No commas or \$	en e			SaM Tree has a way to		
Delayed Costs	(83) Pro-				**************************************	-	
Equipment	The state of the s		THE RESERVE OF THE PROPERTY OF THE PARTY OF	0.0	\$0	\$0 "	\$0
Buildings				0,0	\$0	\$0.	\$0
Other (as needed)	12.0			0.0	\$0	\$0	\$0
Engineering/construction	1 . (200		0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	101 HOLES			0.0	\$0	n/a	\$0
Training/Sampling		110	-	0.0	.\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs			and the same of th	0.0	. \$0	n/a	\$0
Other (as needed)	\$6,000	01-Jun-2006	31-Mar-2007	0.8	\$249	n/a	\$249
Notes for DELAYED costs	areas neede	d. Date require	ed is the investi comp	gation oliance	date. Final da	dequate control te is the date of	
Avoided Costs	ANNU	JALIZE [1] avoide	d costs before en	tering it	contraction of the contract of the same	e-time avoided cos	sts)
Disposal		The contract of the contract o	2/11	0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$01
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)		1.5		0.0	\$0	\$0	\$0
Notes for AVOIDED costs			and manufacturing and every second in terms in	a based from		ji. Uzumah sa amaji	
Annroy Cost of Compliance	\$6,000		*****		i Alberta de la composición dela composición de la composición de la composición de la composición de la composición dela composición dela composición dela composición de la composición de la composición de la composición dela composici	тотаь	\$249

Compliance History

Customer/Respondent/Owner-Operator:

CN600803456

Texas Department of Transportation

Classification: AVERAGE

Rating: 2.84

Regulated Entity:

RN104535356

TXDOT CSJ 266402001

Classification: AVERAGE

Site Rating: 3.01

BY DEFAULT

ID Number(s):

STORMWATER

PERMIT

TXR15M744

Location:

ON COUNTY ROAD 161 FROM UNITED STATES

HIGHWAY 59 TO 2.6 MILES NORTH AND WEST OF

Rating Date:

9/1/2005

FARM-TO-MARKET ROAD 2435, NACOGDOCHES, COUNTY.

Repeat Violator:

NO

TCEQ Region:

REGION 10 - BEAUMONT

Date Compliance History Prepared:

August 15, 2006

Agency Decision Requiring Compliance History:

Enforcement

Compliance Period:

August 09, 2001 to August 09, 2006

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

Name:

Ruben Soto

Phone: 512 239-4571

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? 2. Has there been a (known) change in ownership of the site during the compliance period? 3. If Yes, who is the current owner?

No No

N/A

4. if Yes, who was/were the prior owner(s)?

N/A

5. When did the change(s) in ownership occur?

N/A

Components (Multimedia) for the Site:

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

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

C. Chronic excessive emissions events.

N/A

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

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

Date: 05/26/2006

(479753)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rgmt Prov: PERMIT IA

Description: Failure by TXDOT to maintain the Best Management Practices (BMPs) in a manner that 50 % capacity is not exceeded.

Self Report? NO Classification: Moderate

Citation: TWC Chapter 26 26.121(a)(1)

Description: Failure by TXDOT to prevent the unauthorized discharge of diesel fuel from an above ground storage tank. B13

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Ramt Prov: PERMIT IA

Description: Failure by TXDOT to maintain the Best Management Practices (BMPs) in a manner that 50 % capacity is not exceeded.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
TEXAS DEPARTMENT OF	§	
TRANSPORTATION	§	
RN104535356	8	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2006-1220-WQ-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 Texas Department of Transportation ("TxDOT") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and TxDOT appear before the Commission and together stipulate that:

- 1. TxDOT operates a construction site at County Road 161 from United States Highway 59 to 2.6 miles north and west of Farm-to-Market Road 2435 in Nacogdoches County, Texas (the "Site").
- 2. TxDOT has caused, suffered, allowed or permitted the discharge of any 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 TxDOT agree that the Commission has jurisdiction to enter this Agreed Order, and that TxDOT is subject to the Commission's jurisdiction.
- 4. TxDOT received notice of the violations alleged in Section II ("Allegations") on or about August 1, 2006.
- 5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TxDOT of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
- 6. An administrative penalty in the amount of One Thousand Fifty Dollars (\$1,050) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Hundred Ten Dollars (\$210) is deferred contingent upon TxDOT's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If TxDOT fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TxDOT to pay all or part of the deferred

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penalty. Eight Hundred Forty Dollars (\$840) shall be conditionally offset by TxDOT's completion of a Supplemental Environmental Project.

- 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 TxDOT 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 TxDOT began installing and maintaining erosion and sediment control structures, the seeding of grass cover along the creek banks, and the removal of accumulated sediments from existing Best Management Practice ("BMP") structures in the area of Naconiche Creek on June 8, 2006.
- 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 TxDOT 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 operator of the Site, TxDOT is alleged to have:

- 1. Failed to maintain the BMP structures, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a) and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000 Part III Section F(2)(a)(iii) and TEX. WATER CODE § 26.121(d), as documented during an investigation conducted on June 1, 2006.
- 2. Failed to install BMP structures in the area of Naconiche Creek, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a) and TPDES General Permit No. TXR150000 Part III Section F(2)(a)(ii), as documented during an investigation conducted on June 1, 2006.
- 3. Failed to prevent the unauthorized discharge of sediment into the waters in the state, in violation of TEX. WATER CODE § 26.121(d), as documented during an investigation conducted on June 1, 2006.

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III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TxDOT pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and TxDOT'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: Texas Department of Transportation, Docket No. 2006-1220-WQ-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. TxDOT shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with Tex. Water Code § 7.067. As set forth in Section I, Paragraph 6, ("Jurisdiction and Stipulations") above, Eight Hundred Forty Dollars (\$840) of the assessed administrative penalty shall be offset with the condition that TxDOT implement the SEP defined in Attachment A, incorporated herein by reference. TxDOT's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
- 3. It is further ordered that TxDOT shall undertake the following technical requirements:
 - a. Immediately cease all discharge of sediments from the Site;
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Complete the removal of accumulated silt from existing BMP structures, as required by the terms and conditions of TPDES General Permit No. TXR150000; and
 - ii. Complete the installation of BMP structures to properly control soil erosion and sediment discharges, as required by the terms and conditions of TPDES General Permit No. TXR150000.
 - c. Within 45 days after the effective date of this Agreed Order, remove and properly dispose of soil sediment from the area of Naconiche Creek; and

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d. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 3.a. through 3.c. The certification shall, include detailed supporting documentation including receipts, photographs and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that 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:

Manager, Water Section Beaumont Regional Office Texas Commission on Environmental Quality 3870 Eastex Freeway Beaumont, Texas 77703-1830

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

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Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

- 7. This Agreed Order, issued by the Commission, shall not be admissible against TxDOT 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.
- 8. 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.
- 9. Under 30 Tex. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to TxDOT, or three days after the date on which the Commission mails notice of the Order to TxDOT, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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Texas Department of Transportation DOCKET NO. 2006-1220-WQ-E Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission	
For the Executive Director	3/27/07 Date
attached Agreed Order on behalf of the entity, if any	tached Agreed Order. I am authorized to agree to the y, indicated below my signature, and I do agree to the nowledge that the TCEQ, in accepting payment for the entation.
 failure to timely pay the penalty amount, may result A negative impact on my compliance histor Greater scrutiny of any permit applications Referral of this case to the Attorney General penalties, and/or attorney fees, or to Increased penalties in any future enforcement 	submitted by me; submitted by me; sl's Office for contempt, injunctive relief, additional to a collection agency; ent actions against me; s's Office of any future enforcement actions against to law.
m. W. Belrena	12-5-06
Signature	Date
Michael W. Behrens	Executive Director
Name (Printed or typed)	Title
Authorized Representative of	
Texas Department of Transportation	

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.

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Attachment A Docket Number: 2006-1220-WO-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Texas Department of Transportation

Payable Penalty Amount: Eight Hundred Forty Dollars (\$840)

SEP Amount: Eight Hundred Forty Dollars (\$840)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and Development

Areas, Inc. ("RC&D")- Wastewater Treatment Assistance

Location of SEP: Nacogdoches County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

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2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. 1716 Briarcrest Drive
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division Attention: SEP Coordinator, MC 219 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

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6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

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