# 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 ENDANGERMENT ORDER |
| __SHUTDOWN ORDER | __FINDINGS DEFAULT ORDER | __EMERGENCY 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) OCCURRED:** County Road 161 from United States Highway 59 to 2.6 miles north and west of Farm-to-Market Road 2435, Nacogdoches County

**TYPE OF OPERATION:** Construction site

**SMALL BUSINESS:** ___ Yes __X__ No

**OTHER SIGNIFICANT MATTERS:** A complaint was received on May 30, 2006, for allegedly failing to prevent sediment from discharging off a construction site on Farm-to-Market Road 2435 in Nacogdoches County. There is no record of additional pending enforcement actions regarding this facility location.

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on March 19, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** Ms. Melissa Keller, Enforcement Division, MC 219, (512) 239-1768

**TCEQ Enforcement Coordinator:** Mr. Ruben Soto, Enforcement Division, Enforcement Section I, MC 169, (512) 239-4571; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

**Respondent:** Mr. David Selman, Area Engineer, Texas Department of Transportation, 918 Industrial Boulevard, Nacogdoches, Texas 75964
Mr. Michael W. Behrens, Executive Director, Texas Department of Transportation, 918 Industrial Boulevard, Nacogdoches, Texas 75964

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

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<br><br>**Date of Complaint Relating to this Case:** May 30, 2006<br><br>**Date of Investigation Relating to this Case:** June 1, 2006<br><br>**Date of NOE Relating to this Case:** July 27, 2006 (NOE)<br><br>**Background Facts:** This was a complaint investigation. Three violations were documented.<br><br>**WATER**<br><br>1) Failed to maintain the Best Management Practice ("BMP") structures [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)].<br><br>2) Failed to install BMP structures in the area of Naconiche 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)].<br><br>3) Failed to prevent the unauthorized discharge of sediment into the waters in the state [TEX. WATER CODE § 26.121(d)]. | **Total Assessed:** $1,050<br><br>**Total Deferred:** $210<br>_X_ Expedited Settlement<br>__ Financial Inability to Pay<br><br>**SEP Conditional Offset:** $840<br><br>**Total Paid (Due) to General Revenue:** $0<br><br>**Site Compliance History Classification:** __ High _X_ Avg. __ Poor<br><br>**Person Compliance History Classification:** __ High _X_ Avg. __ Poor<br><br>**Major Source:** ___ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>1) 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 BMP structures in the area of Naconiche Creek on June 8, 2006.<br><br>**Ordering Provisions:**<br><br>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A).<br><br>3) The Order will also require the Respondent to:<br><br>a. Immediately cease all discharge of sediments from the Site;<br><br>b. Within 30 days after the effective date of this Agreed Order:<br><br>i. Complete the removal of accumulated silt from existing BMP structures; and<br><br>ii. Complete the installation of BMP structures to properly control soil erosion and sediment discharges.<br><br>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<br><br>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. |

Attachment: Site Compliance History

**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. 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.

## 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.

## 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.

# Penalty Calculation Worksheet (PCW)

TCEQ

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

**DATES** **Assigned** 31-Jul-2006
**PCW** 11-Aug-2006 **Screening** 10-Aug-2006 **EPA Due**

**RESPONDENT/FACILITY INFORMATION**

**Respondent** Texas Department of Transportation
**Reg. Ent. Ref. No.** RN104535356
**Facility/Site Region** 10-Beaumont **Major/Minor Source** Minor Source

**CASE INFORMATION**

**Enf./Case ID No.** 30804 **No. of Violations** 1
**Docket No.** 2006-1220-WQ-E **Order Type** 1660
**Media Program(s)** Water Quality **Enf. Coordinator** Ruben Soto
**Multi-Media** **EC's Team** Enforcement Team 1
**Admin. Penalty $ Limit Minimum** $0 **Maximum** $10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** ***Subtotal 1*** **$1,000**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** **5%** Enhancement ***Subtotals 2, 3, & 7*** **$50**

Notes: The Respondent received one Commission issued NOV with same or similar violations as those cited in this action.

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

Notes: The Respondent does not meet culpability criteria.

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

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | *(mark with a small x)* |

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

**Economic Benefit** **0%** Enhancement* ***Subtotal 6*** **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts $249
Approx. Cost of Compliance $6,000

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **$1,050**

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

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

Notes:

**Final Penalty Amount** **$1,050**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **$1,050**

**DEFERRAL** **20%** Reduction **Adjustment** **-$210**

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **$840**

**Screening Date** 10-Aug-2006 **Docket No.** 2006-1220-WQ-E **PCW**
**Respondent** Texas Department of Transportation *Policy Revision 2 (September 2002)*
**Case ID No.** 30804 *PCW Revision May 19, 2005*
**Reg. Ent. Reference No.** RN104535356
**Media [Statute]** Water Quality
**Enf. Coordinator** Ruben Soto

## Compliance History Worksheet

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

| Component | Number of... | Enter Number Here | Adjust. |
|---|---|---|---|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)* | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)* | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 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* | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)* | 0 | 0% |
| | | *Please Enter Yes or No* | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

***Adjustment Percentage (Subtotal 2)*** **5%**

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

No <

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

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

Average Performer <

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

>> **Compliance History Summary**

**Compliance History Notes** The Respondent received one Commission issued NOV with same or similar violations as those cited in this action.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** **5%**

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

**Respondent** Texas Department of Transportation *Policy Revision 2 (September 2002)*

**Case ID No.** 30804 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN104535356

**Media [Statute]** Water Quality

**Enf. Coordinator** Ruben Soto

**Violation Number** 1

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 281.25(a)(4), Texas Water Code § 26.121(d), 40 Code of Federal Regulations § 122.26(a) and TPDES General Permit No. TXR150000 Part III Section F(2)(a)(ii) and (iii).

**Secondary Rule Cite(s)**

**Violation Description** Failure to maintain Best Management Practice ("BMP") structures in an effective operating manner and failure to install BMP structures in areas needed resulting in the unauthorized discharge of sediments into waters of the state. Specifically, the investigator observed at multiple areas an accumulation of silt and sediment that needed to be removed from the BMP structures, and also observed that soil erosion was occurring in the area of Naconiche Creek. The investigator also observed very small amounts of sediment discharging into Naconiche Creek, as documented during an investigation conducted on June 1, 2006.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | x |
| Potential | | | |

OR

**Percent** 10%

## >> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent**

Matrix Notes: By failing to prevent the unauthorized discharge of sediment into water in the state, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -$9,000

**Base Penalty Subtotal** $1,000

## Violation Events

Number of Violation Events 1

| mark only one / use a small x | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One quarterly event is recommended based on the investigation date of June 1, 2006 to the screening date of August 10, 2006.

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $249

## Statutory Limit Test

**Violation Final Penalty Total** $1,050

**This violation Final Assessed Penalty (adjusted for limits)** $1,050

# Economic Benefit Worksheet

**Respondent** Texas Department of Transportation
**Case ID No.** 30804
**Reg. Ent. Reference No.** RN104535356
**Media [Statute]** Water Quality
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.0 | $0 | $0 | $0 |
| Buildings | | | | 0.0 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.0 | $0 | $0 | $0 |
| Engineering/construction | | | | 0.0 | $0 | $0 | $0 |
| Land | | | | 0.0 | $0 | n/a | $0 |
| Record Keeping System | | | | 0.0 | $0 | n/a | $0 |
| Training/Sampling | | | | 0.0 | $0 | n/a | $0 |
| Remediation/Disposal | | | | 0.0 | $0 | n/a | $0 |
| Permit Costs | | | | 0.0 | $0 | n/a | $0 |
| Other (as needed) | $6,000 | 01-Jun-2006 | 31-Mar-2007 | 0.8 | $249 | n/a | $249 |

**Notes for DELAYED costs** Estimated cost to remove accumulated sediments and to install adequate control measures in areas needed. Date required is the investigation date. Final date is the date of anticipated compliance.

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance** $6,000

**TOTAL** $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 BY DEFAULT | Site Rating: 3.01 |

ID Number(s): STORMWATER PERMIT TXR15M744

Location: ON COUNTY ROAD 161 FROM UNITED STATES HIGHWAY 59 TO 2.6 MILES NORTH AND WEST OF FARM-TO-MARKET ROAD 2435, NACOGDOCHES, COUNTY.

Rating Date: 9/1/2005
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? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. if Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

**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.)
N/A

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

F. Environmental audits.
N/A

G. Type of environmental management systems (EMSs).
N/A

H. Voluntary on-site compliance assessment dates.
N/A

I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.
N/A

Sites Outside of Texas
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

| | | |
|---|---|---|
| **IN THE MATTER OF AN** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **TEXAS DEPARTMENT OF** | § | |
| **TRANSPORTATION** | § | |
| **RN104535356** | § | **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

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.

## 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

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

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.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 3/27/07
For the ~~Executive~~ Director 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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

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

M. W. Behrens 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.

**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. 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.

## 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.

## 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.