

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1412-MWD-E TCEQ ID: RN101608131 CASE NO.: 31089
RESPONDENT NAME: City of Navasota

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: City of Navasota Old Sewage Treatment Plant, at the intersection of Chase Street and Peeples Street, on the southern bank of Cedar Creek, one block north of State Highway 105, Navasota, Grimes County

TYPE OF OPERATION: Domestic wastewater system

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: No complaints were received. 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 June 18, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Laurie Eaves, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4495; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468

Respondent: The Honorable Bert Miller, Mayor, City of Navasota, P.O. Box 910, Navasota, Texas 77868
 Mr. Gary Johnson, Director of Public Works, City of Navasota, P.O. Box 910, Navasota, Texas 77868

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 9, 2006</p> <p>Date of NOE Relating to this Case: August 16, 2006 (NOE)</p> <p>Background Facts: This was a routine record review. An equipment malfunction occurred at the wastewater treatment facility causing approximately 150,000 gallons of untreated wastewater to drain into Cedar Creek, resulting in a fish kill of approximately 40 fish. One violation was documented.</p> <p>WATER</p> <p>Failed to prevent the unauthorized discharge of untreated wastewater into Cedar Creek [TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010231001 Permit Conditions No. 2(g)].</p>	<p>Total Assessed: \$8,700</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$8,700</p> <p>Total Paid to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On April 11, 2006, installed new bearings on the rotating drum screen and put the rotating drum screen back in service. Also, back-up electrical controls were installed on the rotating drum screen electrical system which will allow influent to bypass the rotating drum screen whenever a malfunction occurs due to mechanical or electrical failure;</p> <p>b. On April 12, 2006, completed the clean-up and proper disposal of the affected areas in and around Cedar Creek; and</p> <p>c. In July 2006, implemented new standard operating procedures which address preventive maintenance to the rotating drum screen and weekly inspections on the bearings and bypass valve equipment.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Attachment A
Docket Number: 2006-1412-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Navasota
Penalty Amount: Eight Thousand Seven Hundred Dollars (\$8,700)
SEP Offset Amount: Eight Thousand Seven Hundred Dollars (\$8,700)
Type of SEP: Custom (with pre-approved concept)
Location of SEP: Grimes County

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

1. Project Description

A. Project

The Respondent shall hold a city-wide illegal dump site clean up to remove illegally dumped tires, lumber, brush, and other debris from rights-of-way (R.O.W.) areas within the City limits and at one private property owned by a low-income homeowner. The Respondent shall post "No Dumping" signs on or near R.O.W. areas where dumping is occurring. The clean up will target a total of approximately 13 illegal dump sites. The Respondent shall recycle all tires collected in the clean up event. The SEP will be performed at no cost to the citizens and the Respondent shall not collect reimbursement from the low-income homeowner for the cost of the property clean up.

The Respondent shall ensure that the event:

- occurs on at least one weekend day during daylight hours;
- occurs on properties where there is no responsible party, the responsible party cannot afford to pay for the cleanup, or the dumping is on publicly-owned R.O.W.;
- is organized and conducted by City employees and/or volunteers;
- provides for the proper disposal of wastes;
- provides for the proper documentation (manifests) for disposal of wastes; and
- provides for recycling of materials, where possible.

The Respondent shall collect, transport, dispose of or recycle the collected materials. SEP monies will be used for heavy equipment such as roll-off bins, trailers, overtime labor of employees, and disposal and recycling costs.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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 also provide a discernible environmental benefit by providing for the proper disposal of wastes that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping. Collection of waste tires will help prevent illegal tire dumps and help rid the community of the attractive nuisance that can harbor vermin, including mosquitoes that can carry West Nile virus. The event will also help prevent potential release of harmful chemicals into the atmosphere should the illegally dumped tires catch fire.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent agrees that it may spend more than the SEP offset to complete the project.

2. Performance Schedule

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of pounds and type of wastes collected;
5. Manifests showing proper disposal and/or recycling of collected materials;
6. Map showing specific location of clean up sites;

7. Photographs of the project (before and after); and
8. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

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

In the event of incomplete performance, with the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment 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.

6. 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.

7. Clean Texas Program

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

federal regulatory program.

8. 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 orders negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	21-Aug-2006	Screening	05-Sep-2006	EPA Due	
	PCW	01-Sep-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Navasota
Reg. Ent. Ref. No.	RN101608131
Facility/Site Region	9-Waco <
Major/Minor Source	Major Source <

CASE INFORMATION			
Enf./Case ID No.	31089	No. of Violations	1
Docket No.	2006-1412-MWD-E	Order Type	Findings <
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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes **12% Enhancement**

Culpability **Subtotal 4**

Notes **0% Enhancement**

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		<i>(mark with a small x)</i>

Notes **25% Reduction**

Economic Benefit **Subtotal 6**

Total EB Amounts	<input type="text" value="\$17"/>	0% Enhancement*
Approx. Cost of Compliance	<input type="text" value="\$1,500"/>	<i>*Capped at the Total EB \$ Amount</i>

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes **Final Penalty Amount**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

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

Notes **0% Reduction**

PAYABLE PENALTY

Screening Date 05-Sep-2006 **Docket No.** 2006-1412-MWD-E **PCW**
Respondent City of Navasota *Policy Revision 2 (September 2002)*
Case ID No. 31089 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101608131
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 <i>(number of NOVs meeting criteria)</i>	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were disclosed)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Other	<i>Please Enter Yes or No</i>		
	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) 12%

>> **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 self-reported two monthly effluent violations and received one NOV with violations not same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

Screening Date 05-Sep-2006 **Docket No.** 2006-1412-MWD-E **PCW**
Respondent City of Navasota *Policy Revision 2 (September 2002)*
Case ID No. 31089 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101608131
Media [Statute] Water Quality
Enf. Coordinator Ruben Soto
Violation Number 1

Primary Rule Cite(s) Tex. Water Code § 26.121(a) and TPDES Permit No. WQ0010231001
 Permit Conditions No. 2(g).
Secondary Rule Cite(s)

Violation Description
 Failure to prevent the unauthorized discharge of untreated wastewater. Specifically, on April 11, 2006, the Respondent notified the Waco Regional office of an unauthorized discharge of wastewater due to a mechanical malfunction. As a result of this malfunction, approximately 150,000 gallons spilled onto the ground and drained into Cedar Creek and resulted in a fish kill of approximately 40 fish, as documented during a record review conducted on June 9, 2006.

Base Penalty \$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	X			Percent 100%
	Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

Matrix Notes
 Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$0

Base Penalty Subtotal \$10,000

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$10,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount \$17

Statutory Limit Test

Violation Final Penalty Total \$8,700

This violation Final Assessed Penalty (adjusted for limits) \$8,700

Economic Benefit Worksheet

Respondent City of Navasota
 Case ID No. 31089
 Reg. Ent. Reference No. RN101608131
 Media [Statute] 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
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)	\$1,500	11-Apr-2006	01-Jul-2006	0.2	\$17	n/a	\$17

Notes for DELAYED costs: Estimated cost to install new bearings on the rotating drum screen, implement new standard operating procedures and to clean up Cedar Creek. The date required is the date the bypass occurred and the final date is the date of compliance.

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

Notes for AVOIDED costs

Approx. Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator: CN600690747 City of Navasota Classification: AVERAGE Rating: 2.10

Regulated Entity: RN101608131 CITY OF NAVASOTA Classification: AVERAGE Site Rating: 0.29
OLD STP

ID Number(s): WASTEWATER PERMIT WQ0010231001
WASTEWATER PERMIT TPDES0071790
WASTEWATER PERMIT TX0071790
WASTEWATER EPA ID TPDES0071790

Location: AT THE INTERSECTION OF CHASE STREET Rating Date: 9/1/2006
AND PEEPLES STREET, ON THE SOUTHERN
BANK OF CEDAR CREEK, ONE BLOCK NORTH Repeat Violator: NO
OF STATE HIGHWAY 105, NAVASOTA,
GRIMES COUNTY

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: September 8, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 8, 2001 to September 8, 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? Yes
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.)

- 1 04/21/2006 (502667)
- 2 05/24/2006 (502668)
- 3 06/23/2006 (502669)
- 4 04/21/2006 (502670)
- 5 09/24/2001 (247282)
- 6 04/25/2005 (423658)
- 7 05/16/2005 (423659)
- 8 06/22/2005 (423660)
- 9 08/30/2005 (404854)
- 10 01/16/2003 (198032)
- 11 01/28/2002 (198031)
- 12 12/20/2002 (198028)
- 13 12/27/2001 (198027)
- 14 02/17/2004 (312291)
- 15 11/20/2002 (198024)
- 16 03/22/2004 (312294)
- 17 11/29/2001 (198023)
- 18 04/19/2004 (312295)
- 19 05/18/2004 (312297)
- 20 10/16/2002 (198020)

21 10/19/2001 (198019)
22 06/15/2004 (312299)
23 09/18/2002 (198017)
24 07/18/2003 (312301)
25 09/19/2001 (198016)
26 08/18/2003 (312303)
27 08/19/2002 (198014)
28 07/25/2005 (444459)
29 09/22/2003 (312305)
30 08/26/2005 (444460)
31 09/16/2005 (444461)
32 07/17/2002 (198011)
33 10/16/2003 (312307)
34 02/16/2006 (475087)
35 11/18/2003 (312308)
36 06/11/2003 (198008)
37 12/18/2003 (312309)
38 06/24/2002 (198007)
39 01/16/2004 (312311)
40 03/28/2006 (475088)
41 05/22/2003 (198004)
42 05/20/2002 (198003)
43 02/22/2005 (385695)
44 04/18/2003 (198000)
45 03/21/2005 (385696)
46 09/30/2005 (475089)
47 04/24/2002 (197999)
48 12/17/2004 (385697)
49 01/20/2005 (385698)
50 11/21/2005 (475090)
51 03/21/2003 (197995)
52 12/20/2005 (475091)
53 03/15/2002 (197994)
54 07/19/2004 (359003)
55 05/08/2003 (27842)
56 08/30/2004 (359004)
57 02/21/2003 (197992)
58 08/17/2006 (508761)
59 09/21/2004 (359005)
60 02/22/2002 (197991)
61 10/20/2005 (475092)
62 10/15/2004 (359006)
63 11/19/2004 (359007)
64 08/16/2006 (482134)

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

Date: 09/24/2001 (247282)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 10/31/2002 (198024)

Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2003 (312311)

Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]
Description: Failure to meet the limit for one or more permit parameter

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
CITY OF NAVASOTA
RN101608131**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2006-1412-MWD-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Navasota ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a domestic wastewater system located at the intersection of Chase Street and Peoples Street, on the southern bank of Cedar Creek, one block north of State Highway 105, Navasota, Grimes County, Texas (the "Facility").
2. The City 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. During a record review on June 9, 2006, TCEQ staff documented the City failed to prevent the unauthorized discharge of untreated wastewater. Specifically, on April 11, 2006, the City notified the TCEQ Waco Regional office of an unauthorized discharge of wastewater due to a main pillow block bearing, which caused the rotating drum screen to quit turning and become

clogged. As a result of this malfunction, approximately 150,000 gallons spilled onto the ground and drained into Cedar Creek and resulted in a fish kill of approximately 40 fish.

4. The City received notice of the violations on August 21, 2006.
5. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. On April 11, 2006, installed new bearings on the rotating drum screen and put the rotating drum screen back in service. Also, back-up electrical controls were installed on the rotating drum screen electrical system which will allow influent to bypass the rotating drum screen whenever a malfunction occurs due to mechanical or electrical failure;
 - b. On April 12, 2006, completed the clean-up and proper disposal of the affected areas in and around Cedar Creek; and
 - c. In July 2006, implemented new standard operating procedures which address preventive maintenance to the rotating drum screen and weekly inspections on the bearings and bypass valve equipment.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 and ch. 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, the City failed to prevent the unauthorized discharge of untreated wastewater into Cedar Creek, in violation of TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010231001 Permit Conditions No. 2(g).
3. Pursuant to TEX. WATER CODE § 13.4151, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Eight Thousand Seven Hundred Dollars (\$8,700) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Eight Thousand Seven Hundred Dollars (\$8,700) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

1911

...

...

...

...

...

...

...

...

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Eight Thousand Seven Hundred Dollars (\$8,700), as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Navasota, Docket No. 2006-1412-MWD-E" to:

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

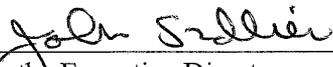
2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Eight Thousand Seven Hundred Dollars (\$8,700) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City'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. 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
4. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against the City 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 8/9/2007

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

I understand that by entering into this Agreed Order, City of Navasota waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.



Signature

Date 4-20-07

Bert Miller

Name (printed or typed)
Authorized Representative
City of Navasota

Title Mayor

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

Handwritten text at the top of the page, possibly a header or title.

Second line of handwritten text.

Third line of handwritten text.

Fourth line of handwritten text.

Fifth line of handwritten text.

Sixth line of handwritten text.

Seventh line of handwritten text.

Eighth line of handwritten text.

Ninth line of handwritten text.

Tenth line of handwritten text.

Final line of handwritten text at the bottom of the page.

Attachment A
Docket Number: 2006-1412-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Navasota
Penalty Amount: Eight Thousand Seven Hundred Dollars (\$8,700)
SEP Offset Amount: Eight Thousand Seven Hundred Dollars (\$8,700)
Type of SEP: Custom (with pre-approved concept)
Location of SEP: Grimes County

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

1. Project Description

A. Project

The Respondent shall hold a city-wide illegal dump site clean up to remove illegally dumped tires, lumber, brush, and other debris from rights-of-way (R.O.W.) areas within the City limits and at one private property owned by a low-income homeowner. The Respondent shall post “No Dumping” signs on or near R.O.W. areas where dumping is occurring. The clean up will target a total of approximately 13 illegal dump sites. The Respondent shall recycle all tires collected in the clean up event. The SEP will be performed at no cost to the citizens and the Respondent shall not collect reimbursement from the low-income homeowner for the cost of the property clean up.

The Respondent shall ensure that the event:

- occurs on at least one weekend day during daylight hours;
- occurs on properties where there is no responsible party, the responsible party cannot afford to pay for the cleanup, or the dumping is on publicly-owned R.O.W.;
- is organized and conducted by City employees and/or volunteers;
- provides for the proper disposal of wastes;
- provides for the proper documentation (manifests) for disposal of wastes; and
- provides for recycling of materials, where possible.

The Respondent shall collect, transport, dispose of or recycle the collected materials. SEP monies will be used for heavy equipment such as roll-off bins, trailers, overtime labor of employees, and disposal and recycling costs.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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 also provide a discernible environmental benefit by providing for the proper disposal of wastes that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping. Collection of waste tires will help prevent illegal tire dumps and help rid the community of the attractive nuisance that can harbor vermin, including mosquitoes that can carry West Nile virus. The event will also help prevent potential release of harmful chemicals into the atmosphere should the illegally dumped tires catch fire.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent agrees that it may spend more than the SEP offset to complete the project.

2. Performance Schedule

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of pounds and type of wastes collected;
5. Manifests showing proper disposal and/or recycling of collected materials;
6. Map showing specific location of clean up sites;

7. Photographs of the project (before and after); and
8. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

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

In the event of incomplete performance, with the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment 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.

6. 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.

7. Clean Texas Program

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

federal regulatory program.

8. 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 orders negotiated with the TCEQ or any other agency of the state or federal government.

