EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1348-MWD-E **TCEQ ID:** RN102335874 **CASE NO.:** 34404

RESPONDENT NAME: Smith County Water Control and Improvement District No. 1

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Smith County WCID No. 1, located 500 feet southesat of State Highway 155 and 0.4 mile south of the intersection of State Highway 155 and Farm-to-Market Road 3311, Smith County

TYPE OF OPERATION: Domestic wastewater system

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. 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 February 25, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3048; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Tommy Vice, General Manager, Smith County Water Control and Improvement District No. 1, 11928 Constantin Avenue, Tyler, Texas 75708
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** June 15, 2007 **Date of NOV/NOE Relating to this Case:** July 3, 2007 (NOE) **Background Facts:** This was a record review. **WATER** Failed to comply with its permitted effluent limits for total copper, total suspended solids, total chlorine residual, and carbonaceous biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010285001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2].	**Total Assessed:** $13,275 **Total Deferred:** $2,655 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $10,620 **Total Paid (Due) to General Revenue:** $0 **Site Compliance History Classification** ___ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** 1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A) 2) The Order will also require the Respondent to, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010285001. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

Additional ID No(s).: TX0032484 AND WQ0010285001

Attachment A
Docket Number: 2007-1348-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Smith County Water Control and Improvement District No. 1**
Payable Penalty Amount:	**Ten Thousand Six Hundred Twenty Dollars ($10,620)**
SEP Amount:	**Ten Thousand Six Hundred Twenty Dollars ($10,620)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Audubon Society –Tyler Habitat Improvement-Langley Island**
Location of SEP:	**Smith 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 will contribute to Tyler Audubon Society Habitat Improvement for its habitat improvement on Langley Island on Lake Tyler. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Audubon Society and the Texas Commission on Environmental Quality. Specifically, the contribution will be used for transportation via boat to the island, for purchase of hand tools for clearing undergrowth and unwanted trees, and for needed signs to mark trails and post rules for island usage.

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 clearing brush to improve the sanctuary for purposes of overseeing the island and cleaning the bird boxes. The project will also help keep the funds for boat transportation from being paid out of pocket by Chapter members and replace the existing rule signs and flags that mark the trails.

C. Minimum Expenditure

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:

Audubon Society
Sharon Jenkins, Exective Director
427 Sterzing Street, Suite 109
Austin, Texas 78704

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 June 26, 2007*

DATES					
Assigned	9-Jul-2007				
PCW	11-Aug-2007	Screening	30-Jul-2007	EPA Due	5-Sep-2007

RESPONDENT/FACILITY INFORMATION

Respondent	Smith County Water Control and Improvement District No. 1		
Reg. Ent. Ref. No.	RN102335874		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	34404	No. of Violations	1
Docket No.	2007-1348-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Heather Brister
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$7,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 77% Enhancement — *Subtotals 2, 3, & 7* **$5,775**

Notes: The Respondent self-reported 15 months of effluent quality violations and was issued one NOV for violations that are not considered to be same or similar.

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

Notes: The Respondent does not meet the 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 x)

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

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$184
Approx. Cost of Compliance	$2,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$13,275**

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

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

Notes:

Final Penalty Amount **$13,275**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$13,275**

DEFERRAL — 20% Reduction — *Adjustment* **-$2,655**

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 **$10,620**

Screening Date	30-Jul-2007	**Docket No.** 2007-1348-MWD-E	**PCW**
Respondent	Smith County Water Control and Improvement District N(		*Policy Revision 2 (September 2002)*
Case ID No.	34404		*PCW Revision June 26, 2007*
Reg. Ent. Reference No.	RN102335874		
Media [Statute]	Water Quality		
Enf. Coordinator	Heather Brister		

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*)	15	75%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		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) 77%

>> 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 15 months of effluent quality violations and was issued one NOV for violations that are not considered to be same or similar.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 77%

Screening Date	30-Jul-2007	**Docket No.** 2007-1348-MWD-E	**PCW**
Respondent	Smith County Water Control and Improvement District No. 1		*Policy Revision 2 (September 2002)*
Case ID No.	34404		*PCW Revision June 26, 2007*
Reg. Ent. Reference No.	RN102335874		
Media [Statute]	Water Quality		
Enf. Coordinator	Heather Brister		

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010285001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2.

Violation Description Failed to comply with its permitted effluent limits, as documented by a TCEQ record review of self-reported data conducted on June 15, 2007, and as shown in the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: A simplified model was used to evaluate carbonaceous biochemical oxygen demand and total copper, to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids and chlorine residuals were also considered. As a result of these discharges, human health or the environment have been exposed to insignificant amounts of pollutants which do not exceed levels harmful to human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 3

212 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Three quarterly events recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $184

Statutory Limit Test

Violation Final Penalty Total $13,275

This violation Final Assessed Penalty (adjusted for limits) $13,275

Economic Benefit Worksheet

Respondent Smith County Water Control and Improvement District No. 1
Case ID No. 34404
Reg. Ent. Reference No. RN102335874
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$2,000	31-Jul-2006	31-May-2008	1.8	$184	n/a	$184
Notes for DELAYED costs	Estimated cost for implementing necessary rehabilitation work to the Facility. Date Required is the initial month of noncompliance. Final Date is the anticipated 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 $2,000

TOTAL $184

Effluent Limit Violation Table

table rev.

Respondent Smith County Water Control and Improvement District No. 1

ID Number(s) WQ0010285001

Docket Number 2007-1348-MWD-E

Enf. Coordinator Heather Brister

Corresponds to Violation Number: 1

	EFFLUENT PARAMETER							
	Permit Limit							
	Total Copper Daily Average 0.026 Milligrams per Liter	Total Copper Daily Maximum 0.055 Milligrams per Liter	Total Copper Daily Average Loading 0.19 Pounds per Day	Total Suspended Solids Daily Average 15 Milligrams per Liter	Total Suspended Solids Daily Maximum 40 Milligrams per Liter	Total Chlorine Residual Minimum 1.0 Milligrams per Liter	Carbonaceous Biochemical Oxygen Demand Daily Average 10 Milligrams per Liter	Carbonaceous Biochemical Oxygen Demand Daily Maximum 25 Milligrams per Liter
Month/Year								
Jul-06	0.027	c	c	c	c	c	c	c
Sep-06	0.055	0.076	0.205	c	c	c	c	c
Nov-06	0.031	c	c	15.6	c	c	c	c
Dec-06	c	c	c	26.7	80	c	c	c
Jan-07	c	c	c	16.4	c	0	c	c
Feb-07	0.027	c	c	25.3	c	c	15.3	28
Mar-07	c	c	c	28	62	c	13	30.2

c = compliant

Compliance History

Customer/Respondent/Owner-Operator: CN600635437 Smith County Water Control and Improvement District No. 1

Regulated Entity: RN102335874 SMITH COUNTY WCID NO. 1

Classification: AVERAGE Rating: 2.28

Classification: AVERAGE Site Rating: 0.82

ID Number(s):			
	WASTEWATER	PERMIT	WQ0010285001
	WASTEWATER	PERMIT	TPDES0032484
	WASTEWATER	PERMIT	TX0032484
	SLUDGE	REGISTRATION	22462
	WASTEWATER LICENSING	LICENSE	WQ0010285001

Location: Located 500 feet southeast of State Highway 155 and 0.4 mile south of the intersection of State Highway 155 and Farm-to-Market Road 3311 in Smith County, Texas.

Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: July 25, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 25, 2002 to July 25, 2007

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

Name: Heather Brister Phone: 512-239-1203

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	08/23/2002	(178450)
2	11/24/2002	(178456)
3	12/02/2002	(178460)
4	01/27/2003	(178468)
5	01/28/2003	(178464)
6	02/06/2003	(178453)
7	02/28/2003	(178428)
8	03/21/2003	(24886)
9	03/25/2003	(178431)
10	04/02/2003	(24119)
11	04/29/2003	(178436)
12	05/24/2003	(178440)
13	06/20/2003	(114052)
14	06/27/2003	(178444)
15	08/25/2003	(303915)
16	08/28/2003	(303912)
17	09/25/2003	(303918)
18	10/27/2003	(303920)
19	11/24/2003	(303922)
20	12/22/2003	(303923)
21	12/29/2003	(303913)
22	12/29/2003	(303921)
23	01/22/2004	(303924)
24	02/20/2004	(303903)
25	04/28/2004	(303906)
26	05/04/2004	(303905)
27	05/05/2004	(303916)

28 06/18/2004 (303910)
29 07/08/2004 (303908)
30 10/20/2004 (355585)
31 11/22/2004 (355586)
32 12/17/2004 (355587)
33 01/20/2005 (383780)
34 02/24/2005 (383778)
35 04/13/2005 (377553)
36 04/26/2005 (383779)
37 06/08/2006 (463195)
38 06/23/2006 (483621)
39 05/16/2007 (560493)
40 07/03/2007 (564584)

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

Date: **09/30/2002** (178456)
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: **03/24/2003** (24886)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: OP TCEQ Permit No. 10285001
Description: Failure to ensure the facility and all of its systems of collection, treatment and disposal are properly operated and maintained.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(c)
Rqmt Prov: OP TCEQ Permit No. 10285001
Description: Failure to ensure the secondary flow measuring equipment is operable.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: OP TCEQ Permit No. 10285001
Description: Failure to properly collect composite effluent samples.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]
30 TAC Chapter 319, SubChapter A 319.7(c)
Description: Failure to maintain a calibrated NIST traceable thermometer in the sample holding refrigerator.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(g)(4)(B)[G]
Rqmt Prov: OP TCEQ Permit No. 10285001
Description: Failure to ensure the facility and all of its systems of collection, treatment and disposal are properly operated and maintained.

Date: **04/30/2003** (178440)
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: **09/30/2003** (303920)
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: **02/29/2004** (303905)
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: **03/31/2004** (303906)
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: **05/31/2004** (303910)
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: **06/30/2004** (303913)
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: **10/31/2004** (355586)
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: **07/31/2006**
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: **09/30/2006**
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: **11/30/2006**
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: **12/31/2006**
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: **01/31/2007**
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: **02/28/2007**
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: **03/31/2007**
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 SMITH COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 RN102335874	§ § § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1348-MWD-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 Smith County Water Control and Improvement District No. 1 ("the District") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the District appear before the Commission and together stipulate that:

1. The District owns and operates a domestic wastewater system located 500 feet southeast of State Highway 155 and 0.4 mile south of the intersection of State Highway 155 and Farm-to-Market Road 3311 in Smith County, Texas (the "Facility").

2. The District has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and the District agree that the Commission has jurisdiction to enter this Agreed Order, and that the District is subject to the Commission's jurisdiction.

4. The District received notice of the violations alleged in Section II ("Allegations") on or about July 8, 2007.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the District of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Thirteen Thousand Two Hundred Seventy-Five Dollars ($13,275) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ten Thousand Six Hundred Twenty Dollars ($10,620) of the administrative penalty shall be conditionally offset by the District's completion of a Supplemental Environmental Project ("SEP"), and Two Thousand Six Hundred Fifty-Five Dollars ($2,655) is deferred contingent upon the District'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 the District fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the District to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the District have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the District has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the District is alleged to have failed to comply with its permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010285001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, as documented by a TCEQ record review of self-reported data conducted on June 15, 2007, and as shown in the following table:

	EFFLUENT PARAMETER							
	Permit Limit							
	Total Copper Daily Average 0.026 Milligrams per Liter	Total Copper Daily Maximum 0.055 Milligrams per Liter	Total Copper Daily Average Loading 0.19 Pounds per Day	Total Suspended Solids Daily Average 15 Milligrams per Liter	Total Suspended Solids Daily Maximum 40 Milligrams per Liter	Total Chlorine Residual Minimum 1.0 Milligrams per Liter	Carbonaceous Biochemical Oxygen Demand Daily Average 10 Milligrams per Liter	Carbonaceous Biochemical Oxygen Demand Daily Maximum 25 Milligrams per Liter
Month/Year								
Jul-06	0.027	c	c	c	c	c	c	c
Sep-06	0.055	0.076	0.205	c	c	c	c	c
Nov-06	0.031	c	c	15.6	c	c	c	c
Dec-06	c	c	c	26.7	80	c	c	c
Jan-07	c	c	c	16.4	c	0	c	c
Feb-07	0.027	c	c	25.3	c	c	15.3	28
Mar-07	c	c	c	28	62	c	13	30.2

c = compliant

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the District pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the District'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: Smith County Water Control and Improvement District No. 1, Docket No. 2007-1348-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 District shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Ten Thousand Six Hundred Twenty Dollars ($10,620) of the assessed administrative penalty shall be offset with the condition that the District implement the SEP defined in Attachment A, incorporated herein by reference. The District'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 the District shall, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010285001. The certification shall include detailed supporting documentation including photographs, receipts, 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:

Water Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

4. The provisions of this Agreed Order shall apply to and be binding upon the District. The District is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the District 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 District's failure to comply is not a violation of this Agreed Order. The District shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The District shall notify the Executive Director within seven days after the District 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 the District shall be made in writing to the Executive Director. Extensions are not effective until the District receives written approval from the 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 the District 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 the District, or three days after the date on which the Commission mails notice of the Order to the District, 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

_____ 2/20/2008
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 indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

_____ Dec. 3, 2007
Signature Date

Tommy Vice General Manager
Name (Printed or typed) Title
Authorized Representative of
Smith County Water Control and Improvement District No. 1

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: 2007-1348-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Smith County Water Control and Improvement District No. 1**
Payable Penalty Amount:	**Ten Thousand Six Hundred Twenty Dollars ($10,620)**
SEP Amount:	**Ten Thousand Six Hundred Twenty Dollars ($10,620)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Audubon Society –Tyler Habitat Improvement-Langley Island**
Location of SEP:	**Smith 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 will contribute to Tyler Audubon Society Habitat Improvement for its habitat improvement on Langley Island on Lake Tyler. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Audubon Society and the Texas Commission on Environmental Quality. Specifically, the contribution will be used for transportation via boat to the island, for purchase of hand tools for clearing undergrowth and unwanted trees, and for needed signs to mark trails and post rules for island usage.

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 clearing brush to improve the sanctuary for purposes of overseeing the island and cleaning the bird boxes. The project will also help keep the funds for boat transportation from being paid out of pocket by Chapter members and replace the existing rule signs and flags that mark the trails.

C. Minimum Expenditure

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:

Audubon Society
Sharon Jenkins, Exective Director
427 Sterzing Street, Suite 109
Austin, Texas 78704

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.