

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1405-MWD-E **TCEQ ID:** RN102076379 **CASE NO.:** 34526
RESPONDENT NAME: Texas Department of Transportation

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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
<p>SITE WHERE VIOLATION(S) OCCURRED: IH35E Rest Area South Bound, located along and within the right-of-way of Interstate Highway 35, at a point approximately 8 miles south of the City of Waxahachie central business district and 1.4 miles of Farm-to-Market Road 329, Ellis County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Zane Webb, Maintenance Division Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701 Mr. Steven E. Simmons, P.E., Deputy Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

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(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 16, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 22, 2007 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>WATER</p> <p>Failure to comply with the permit effluent limits for pH and total suspended solids [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011958001, Effluent Limitations and Monitoring Requirements Nos. 1 and 3, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$6,200</p> <p>Total Deferred: 1,240 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$4,960</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>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 TPDES Permit No. WQ0011958001, Effluent Limitations and Monitoring Requirements as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0011958001

Attachment A
Docket Number: 2007-1405-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Texas Department of Transportation
Payable Penalty Amount:	Four Thousand Nine Hundred Sixty Dollars (\$4,960)
SEP Amount:	Four Thousand Nine Hundred Sixty Dollars (\$4,960)
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:	Ellis 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)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	28-Aug-2007	Screening	29-Aug-2007	EPA Due	
	PCW	30-Aug-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Texas Department of Transportation		
Reg. Ent. Ref. No.	RN102076379		
Facility/Site Region	4-Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34526	No. of Violations	1	
Docket No.	2007-1405-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Jorge Ibarra, P.E.	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 55% Enhancement Subtotals 2, 3, & 7 \$2,200

Notes: The Respondent was issued two NOVs with the same/similar type of violations and self-reported nine months of effluent violations.

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 EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts \$192 0% Enhancement* Subtotal 6 \$0
 Approx. Cost of Compliance \$2,000 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$6,200

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 \$6,200

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$6,200

DEFERRAL 20% Reduction Adjustment -\$1,240

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 \$4,960

Screening Date 29-Aug-2007

Docket No. 2007-1405-MWD-E

PCW

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002)

Case ID No. 34526

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102076379

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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)	11	55%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 55%

>> 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 was issued two NOVs with the same/similar type of violations and self-reported nine months of effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 55%

Screening Date 29-Aug-2007	Docket No. 2007-1405-MWD-E	PCW
Respondent Texas Department of Transportation	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34526	<small>PCW Revision June 26, 2007</small>	
Reg. Ent. Reference No. RN102076379		
Media [Statute] Water Quality		
Enf. Coordinator Jorge Ibarra, P.E.		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011958001, Effluent Limitations and Monitoring Requirements Nos. 1 and 3, 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)	
Violation Description	Failed to comply with permit effluent limits. See attached Effluent Limit Violation Table.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		x
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification				
	Major	Moderate	Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Percent <input type="text" value="0%"/>				
Matrix Notes	Failure to comply with the permitted limits for pH and total suspended solids ("TSS") resulted in the exposure of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment as the result of the excursions.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

	daily	<input type="text"/>
	monthly	<input type="text"/>
<small>mark only one with an x</small>	quarterly	X
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Four quarterly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$192"/>	Violation Final Penalty Total <input type="text" value="\$6,200"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$6,200"/>	

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 34526
Reg. Ent. Reference No. RN102076379
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	1-Jun-2006	1-May-2008	1.9	\$192	n/a	\$192

Notes for DELAYED costs

Estimated cost to provide additional oversight and sampling which may have alleviated or prevented the noncompliance. Date Required is the first day of non-compliance, Final Date is the expected compliance date.

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** \$192

Compliance History

Customer/Respondent/Owner-Operator: CN600803456 Texas Department of Transportation Classification: AVERAGE Rating: 3.07

Regulated Entity: RN102076379 IH35E REST AREA SOUTH BOUND Classification: AVERAGE Site Rating: 0.54

ID Number(s):
 WASTEWATER PERMIT WQ0011958001
 WASTEWATER PERMIT TX0075205000
 WASTEWATER PERMIT TPDES0075205
 WASTEWATER PERMIT TX0075205
 WASTEWATER LICENSING LICENSE WQ0011958001

Location: located along and within the right-of-way of Interstate Highway 35, at a point approximately 8 miles south of the City of Waxahachie central business district and 1.4 miles north of Farm-to-Market Road 329 in Ellis County, Texas Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: August 29, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 29, 2002 to August 29, 2007

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

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 12/16/2003 (313526)
 - 2 01/20/2004 (313527)
 - 3 01/26/2004 (259278)
 - 4 02/10/2004 (359520)
 - 5 02/23/2004 (313522)
 - 6 03/22/2004 (313523)
 - 7 04/19/2004 (313524)
 - 8 04/20/2004 (267261)
 - 9 05/27/2004 (273704)
 - 10 06/23/2004 (313525)
 - 11 07/19/2004 (359521)
 - 12 08/23/2004 (359522)
 - 13 09/22/2004 (359523)
 - 14 10/21/2004 (386028)
 - 15 11/22/2004 (386029)
 - 16 12/20/2004 (386030)
 - 17 01/26/2005 (386031)
 - 18 03/14/2005 (386026)
 - 19 03/14/2005 (386027)
 - 20 04/25/2005 (423926)
 - 21 05/23/2005 (423927)

22 06/17/2005 (423928)
 23 07/18/2005 (444728)
 24 08/19/2005 (444729)
 25 09/15/2005 (444730)
 26 10/09/2005 (475552)
 27 11/21/2005 (475553)
 28 12/15/2005 (475554)
 29 01/17/2006 (475555)
 30 02/21/2006 (475550)
 31 03/20/2006 (475551)
 32 04/20/2006 (502973)
 33 06/05/2006 (502974)
 34 06/22/2006 (502975)
 35 07/28/2006 (525311)
 36 08/22/2006 (525312)
 37 09/20/2006 (525313)
 38 05/23/2007 (554767)
 39 06/26/2007 (564574)
 40 08/22/2007 (567856)

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

Date: 02/29/2004 (313523)

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: 04/20/2004 (267261)

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)
 30 TAC Chapter 305, SubChapter F 305.125(11)(C)[G]

Description: Failure to submit ASR

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet permitted limit for DO

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to maintain records

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]

Description: Failure to document Mg correction

Date: 05/31/2004 (313525)

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: 06/30/2005 (444728)

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: 02/28/2006 (475551)

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: 03/31/2006 (502973)

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: 06/30/2006 (525311)

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: 05/25/2007 (554767)

Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 317 317.4(a)(5)		
Description:	Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(11)(B) 30 TAC Chapter 305, SubChapter F 305.125(11)(C)[G]		
Rqmt Prov:	PERMIT Sludge Provisions, Section III, G.		
Description:	Failure to submit the annual sludge reports.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.6(b)(3)[G]		
Rqmt Prov:	PERMIT Effluent Limitations and Monitoring Req.		
Description:	Failure to comply with the 20 minute disinfection detention time.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT Effluent Limitations and Monitoring Req.		
Description:	Failure to maintain compliance with permitted effluent limits.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT Monitoring and Reporting Requirements		
Description:	Failure to provide a means of measuring the effluent flow.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT Effluent Limitations and Monitoring Req.		
Description:	Failure to maintain compliance with the permitted effluent limits for pH minimum and TSS daily average (mg/l).		
Self Report?	NO	Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter D 305.65		
Description:	Failure to file an application for renewal of the existing permit 180 days prior to the date of expiration.		
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:	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:	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
TEXAS DEPARTMENT OF
TRANSPORTATION
RN102076379**

**§ BEFORE THE
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1405-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 Texas Department of Transportation ("TX DOT") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and TX DOT appear before the Commission and together stipulate that:

1. TX DOT owns and operates a wastewater treatment facility located along and within the right-of-way of Interstate Highway 35, at a point approximately 8 miles south of the City of Waxahachie central business district and 1.4 miles north of Farm-to-Market Road 329 in Ellis County, Texas (the "Facility").
2. TX DOT has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and TX DOT agree that the Commission has jurisdiction to enter this Agreed Order, and that TX DOT is subject to the Commission's jurisdiction.
4. TX DOT received notice of the violations alleged in Section II ("Allegations") on or about August 27, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TX DOT of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Two Hundred Dollars (\$6,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

One Thousand Two Hundred Forty Dollars (\$1,240) is deferred contingent upon TX DOT'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 TX DOT fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TX DOT to pay all or part of the deferred penalty. Four Thousand Nine Hundred Sixty Dollars (\$4,960) shall be conditionally offset by TX DOT's completion of a Supplemental Environmental Project ("SEP").

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 TX DOT 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 TX DOT 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, TX DOT is alleged to have failed to comply with permit effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011958001, Effluent Limitations and Monitoring Requirements Nos. 1 and 3, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on July 16, 2007, as indicated in the table below.

EFFLUENT PARAMETER			
Permit Limit			
	Minimum pH	TSS Daily Average	TSS Single Grab
Month/Year	6	20 mg/L	65 mg/L
Jun-06	5.7	c	c
Nov-06	3.14	c	c
Jan-07	C	37	68
Mar-07	C	43	c

TSS = total suspended solids mg/L = milligrams per liter c = compliant

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TX DOT pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and TX DOT'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. 2007-1405-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. TX DOT shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Four Thousand Nine Hundred Sixty Dollars (\$4,960) of the assessed administrative penalty shall be offset with the condition that TX DOT implement the SEP defined in Attachment A, incorporated herein by reference. TX DOT'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 TX DOT shall within 60 days after the effective date of this Agreed Order, submit written certification of compliance with TPDES Permit No. WQ0011958001, Effluent Limitations and Monitoring Requirements as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118

4. The provisions of this Agreed Order shall apply to and be binding upon TX DOT. TX DOT 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 TX DOT 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, TX DOT's failure to comply is not a violation of this Agreed Order. TX DOT shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. TX DOT shall notify the Executive Director within seven days after TX DOT 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 TX DOT shall be made in writing to the Executive Director. Extensions are not effective until TX DOT 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 TX DOT 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 TX DOT, or three days after the date on which the Commission mails notice of the Order to TX DOT, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Received:

Feb 13 2008 03:12pm

FEB-13-2008 WED 02:57 PM TxDOT MNT DIVISION

FAX NO. 512 416 3078

P. 02

From:TCEQ DFW REGION

817 588 5905

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

2/20/2008
Date

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

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

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

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

[Signature] PE
Signature

2-11-08
Date

STEVE E. SIMMONS, PE
Name (Printed or typed)
Authorized Representative of
Texas Department of Transportation

DERBY BRIDGEMAN COLLINS
Title

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

Attachment A
Docket Number: 2007-1405-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Texas Department of Transportation
Payable Penalty Amount:	Four Thousand Nine Hundred Sixty Dollars (\$4,960)
SEP Amount:	Four Thousand Nine Hundred Sixty Dollars (\$4,960)
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:	Ellis 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.

