

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0877-MWD-E **TCEQ ID:** RN102076296 **CASE NO.:** 37772

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: Interstate Highway 35 East Rest Area North Bound, located along and within the right-of-way of Interstate Highway 35 East, at a point approximately 1.4 miles north 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 November 23, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, 512-239-2554; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Toribio Garza, Jr., Maintenance Division 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 24, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 22, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more. Specifically, the biochemical oxygen demand daily average exceeded the permit effluent limit by 40% or more during June 2008 and December 2008 and the total suspended solids daily average during December 2008, and exceeded the permit effluent limit by 40% or more, and the TCEQ was not notified [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 7.c].</p> <p>2) Failure to timely submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011959001, Sludge Provisions].</p> <p>3) Failure to provide a legible staff gauge to measure the effluent flow rate at Outfall 001. Specifically, the primary and secondary flow measuring devices for Outfall 001 include a 22.5 degree V-notch weir and an Ultrasonic OCM III Open Channel Flow Monitor; however, no staff gauge was present [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011959001, Operational</p>	<p>Total Assessed: \$5,140</p> <p>Total Deferred: \$1,028 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$4,112</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On May 7, 2009, submitted the DMR for the monitoring period ending May 31, 2008 and the 2008 annual sludge report to the TCEQ; and</p> <p>b. On May 14, 2009, submitted documentation that a staff gauge had been installed to measure the effluent flow rate at Outfall 001.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update operational guidance to ensure that exceedances of the permitted effluent limits by 40% or more are properly reported to the TCEQ; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a.</p>

<p>Requirements No. 5].</p> <p>4) Failure to timely submit the discharge monitoring report ("DMR") for the monitoring period ending May 31, 2008, by the 20th day of the following month [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 1].</p>		
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Additional ID No(s): WQ0011959001

Attachment A
Docket Number: 2009-0877-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Texas Department of Transportation
Payable Penalty Amount:	Four Thousand One Hundred Twelve Dollars (\$4,112)
SEP Amount:	Four Thousand One Hundred Twelve Dollars (\$4,112)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or 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, Suite 510
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 each 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:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
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 October 30, 2008

TCEQ

DATES	Assigned PCW	26-May-2009	Screening	10-Jun-2009	EPA Due	
		16-Jun-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Texas Department of Transportation		
Reg. Ent. Ref. No.	RN102076296		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37772	No. of Violations	4
Docket No.	2009-0877-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		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 Enhancement **Subtotals 2, 3, & 7**

Notes:

Culpability Enhancement **Subtotal 4**

Notes:

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	<input type="text" value="\$24"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$525"/>	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes:

PAYABLE PENALTY

Screening Date 10-Jun-2009

Docket No. 2009-0877-MWD-E

PCW

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002)

Case ID No. 37772

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102076296

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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>)	1	5%
	Other written NOVs	25	50%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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 judgments 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 submitted</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%

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) 95%

>> **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

An enhancement is recommended due to one NOV with violations same or similar to those cited in this action, 25 self-reported effluent violations, and two final agreed orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 95%

Screening Date 10-Jun-2009	Docket No. 2009-0877-MWD-E	PCW														
Respondent Texas Department of Transportation		<small>Policy Revision 2 (September 2002)</small>														
Case ID No. 37772		<small>PCW Revision October 30, 2008</small>														
Reg. Ent. Reference No. RN102076298																
Media [Statute] Water Quality																
Enf. Coordinator Lanae Foard																
Violation Number <input type="text" value="1"/>																
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 7.c															
Violation Description	Failed to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more, as documented during an investigation conducted on March 24, 2009. Specifically, the biochemical oxygen demand daily average exceeded the permit effluent limit by 40% or more during June 2008 and December 2008, and the total suspended solids daily average during December 2008, exceeded the permit effluent limit by 40% or more, and the TCEQ was not notified.															
	Base Penalty	<input type="text" value="\$10,000"/>														
>> Environmental, Property and Human Health Matrix																
	Harm															
	Release	Major Moderate Minor														
OR	Actual	<input type="text"/> <input type="text"/> <input type="text"/>														
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>														
		Percent <input type="text" value="0%"/>														
>> Programmatic Matrix																
	Falsification															
	Major Moderate Minor															
	<input type="text"/> <input checked="" type="text"/> <input type="text"/>															
		Percent <input type="text" value="10%"/>														
Matrix Notes	<input type="text" value="100% of the permit requirement was not met."/>															
	Adjustment	<input type="text" value="\$9,000"/>														
		<input type="text" value="\$1,000"/>														
Violation Events																
	Number of Violation Events <input type="text" value="2"/>	<input type="text" value="325"/> Number of violation days														
	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input checked="" type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input checked="" type="text"/>	
daily	<input type="text"/>															
weekly	<input type="text"/>															
monthly	<input type="text"/>															
quarterly	<input type="text"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input checked="" type="text"/>															
<small>mark only one with an x</small>		Violation Base Penalty <input type="text" value="\$2,000"/>														
	<input type="text" value="Two single events are recommended (one for each noncompliance report)."/>															
Good Faith Efforts to Comply																
	<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>														
	<small>Before NOV NOV to EOPRP/Settlement Offer</small>															
Extraordinary	<input type="text"/> <input type="text"/>															
Ordinary	<input type="text"/> <input type="text"/>															
N/A	<input checked="" type="text"/> (mark with x)															
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>															
	Violation Subtotal	<input type="text" value="\$2,000"/>														
Economic Benefit (EB) for this violation																
	Estimated EB Amount <input type="text" value="\$19"/>	Violation Final Penalty Total <input type="text" value="\$3,900"/>														
Statutory Limit Test																
	This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$3,900"/>														

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 37772
Reg. Ent. Reference No. RN102076296
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	20-Jul-2008	12-Jan-2010	1.48	\$19	n/a	\$19
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to update operational guidance to ensure that exceedances of the permitted effluent limits by 40% or more are properly reported to the TCEQ. Date required is the date the first report was due. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$19

Screening Date 10-Jun-2009	Docket No. 2009-0877-MWD-E	PCW			
Respondent Texas Department of Transportation		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 37772		<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN102076296					
Media [Statute] Water Quality					
Enf. Coordinator Lanae Foard					
Violation Number <input type="text" value="2"/>					
Rule Cite(s)	30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. WQ0011959001, Sludge Provisions				
Violation Description	Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008, as documented during an investigation conducted on March 24, 2009.				
	Base Penalty	<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
	Harm				
	Major	Moderate	Minor		
OR	Actual	<input type="text"/>	<input type="text"/>	Percent	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>		
>> Programmatic Matrix					
	Major	Moderate	Minor		
	Falsification	<input type="text"/>	<input type="text" value="x"/>	Percent	<input type="text" value="1%"/>
Matrix Notes	At least 70% of the permit requirement was met.				
	Adjustment	<input type="text" value="\$9,900"/>			
		<input type="text" value="\$100"/>			
Violation Events					
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="248"/>	
	<i>mark only one with an x</i>	daily	<input type="text"/>		
		weekly	<input type="text"/>		
		monthly	<input type="text"/>		
		quarterly	<input type="text"/>		
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	<input type="text" value="x"/>	Violation Base Penalty	<input type="text" value="\$100"/>
	One single event is recommended.				
Good Faith Efforts to Comply			0.0% Reduction	<input type="text" value="\$0"/>	
			Before NOV	NOV to EDRP/Settlement Offer	
	Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	N/A	<input type="text" value="x"/>	<input type="text"/>	<input type="text" value="(mark with x)"/>	
Notes	The Respondent does not meet good faith criteria for this violation.				
	Violation Subtotal	<input type="text" value="\$100"/>			
Economic Benefit (EB) for this violation			Statutory Limit Test		
	Estimated EB Amount	<input type="text" value="\$3"/>	Violation Final Penalty Total	<input type="text" value="\$195"/>	
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$195"/>	

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 37772
Reg. Ent. Reference No. RN102076296
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	1-Sep-2008	7-May-2009	0.68	\$3	n/a	\$3
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated amount required to submit the annual sludge report to the TCEQ. Date Required is the date the report was due. Final Date is the date the annual sludge report was submitted.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 10-Jun-2009	Docket No. 2009-0877-MWD-E	PCW		
Respondent Texas Department of Transportation		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37772		<i>PCW Revision October 30, 2009</i>		
Reg. Ent. Reference No. RN102076296				
Media [Statute] Water Quality				
Enf. Coordinator Lanae Foard				
Violation Number 3				
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0011959001, Operational Requirements No. 5			
Violation Description	Failed to provide a legible staff gauge to measure the effluent flow rate at Outfall 001, as documented during an investigation on March 24, 2009. Specifically, the primary and secondary flow measuring devices for Outfall 001 include a 22.5 degree V-notch weir and an Ultrasonic OCM III Open Channel-Flow Monitor; however, no staff gauge was present.			
	Base Penalty	\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential		x	
			Percent	5%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
			Percent	0%
Matrix Notes	Human health or the environment would or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
	Adjustment	\$9,500		
				\$500
Violation Events				
	Number of Violation Events	1	Number of violation days	51
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event		x	
			Violation Base Penalty	\$500
	One single event is recommended.			
Good Faith Efforts to Comply				
	25.0%	Reduction		\$125
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary				
Ordinary	x			
N/A			(mark with x)	
Notes	The Respondent achieved compliance on May 14, 2009.			
		Violation Subtotal	\$375	
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	\$1	Violation Final Penalty Total	\$850
			This violation Final Assessed Penalty (adjusted for limits)	\$850

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 37772
Reg. Ent. Reference No. RN102076206
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment	\$150	24-Mar-2009	14-May-2009	0.14	\$0	\$1	\$1
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to install a staff gauge. Date required is the investigation date. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering Item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$150

TOTAL \$1

Screening Date 10-Jun-2009	Docket No. 2009-0877-MWD-E	PCW	
Respondent Texas Department of Transportation		<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37772		<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN102076296			
Media [Statute] Water Quality			
Enf. Coordinator Lanae Foard			
Violation Number 4			
Rule Cite(s)	30 Tex. Admin Code § 305.125(17) and TPDES Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 1		
Violation Description	Failed to timely submit the discharge monitoring report (DMR) for the monitoring period ending May 31, 2008, by the 20th day of the following month, as documented during an investigation conducted on March 24, 2009.		
	Base Penalty	\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	0%
>> Programmatic Matrix			
	Major	Moderate	Minor
Falsification	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
		Percent	1%
Matrix Notes	At least 70% of the permit requirement was met.		
	Adjustment	\$9,900	
			\$100
Violation Events			
Number of Violation Events	1	Number of violation days	321
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
single event	<input checked="" type="checkbox"/>	\$100	
	One single event is recommended.		
Good Faith Efforts to Comply			
	0.0% Reduction		\$0
	<small>Before NOV</small>	<small>NOV to EDRFP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>	
Notes	The Respondent does not meet good faith criteria for this violation.		
	Violation Subtotal	\$100	
Economic Benefit (EB) for this violation			
Estimated EB Amount	\$1	Statutory Limit Test	
		Violation Final Penalty Total	\$195
		This violation Final Assessed Penalty (adjusted for limits)	\$195

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 37772
Reg. Ent. Reference No. RN102076296
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
6.0	15

Item Cost **Date Required:** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description: No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$25	20-Jun-2008	7-May-2009	0.88	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated amount required to submit the DMR for the monitoring period ending May 31, 2008 to the TCEQ. Date Required is the date the DMR was due. Final Date is the date the DMR was submitted.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$25 **TOTAL** \$1

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600803456	Texas Department of Transportation	Classification: AVERAGE	Rating: 3.15
Regulated Entity:	RN102076296	IH35E REST AREA N BOUND	Classification: AVERAGE	Site Rating: 2.01
ID Number(s):	WASTEWATER	PERMIT	WQ0011959001	
	WASTEWATER	PERMIT	TPDES0075191	
	WASTEWATER	PERMIT	TX0075191	
Location:	ALONG AND WITHIN THE RIGHT-OF-WAY OF INTERSTATE HIGHWAY 35, AT A POINT APPROXIMATELY 1.4 MILES NORTH OF FARM-TO-MARKET ROAD 329 IN ELLIS COUNTY, TEXAS			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 05, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 05, 2004 to June 05, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Lanae Foard	Phone:	512 - 239 - 2554	

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeal Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- | | |
|--|----------------------------|
| Effective Date: 08/20/2005 | ADMINORDER 2003-1370-MWD-E |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121
30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: Effluent Limits PERMIT | |
| Description: Failure to comply with the permit limit for Total Suspended Solids daily average (mg/l) at Outfall 001A for the monitoring periods ending 10/31/2001 and 01/31/2002. These violations meet referral criteria. Other violation(s) of permit effluent limits as listed in the violation report attached to the investigation report | |
| | |
| Effective Date: 01/30/2009 | ADMINORDER 2008-0902-MWD-E |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: Effluent Limits PERMIT | |
| Description: Failed to comply with permitted limits. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(17) | |
| Rqmt Prov: Effluent Reporting Requirements PERMIT | |
| Description: Failed to submit the DMR for the reporting period ending May 31, 2007. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(17) | |
| Rqmt Prov: Monitoring and Reporting Requirements PERMIT | |
| Description: Failed to submit a complete and accurate DMR. Specifically, the DMR parameter data Total Ammonia Nitrogen single grab maximum was not timely submitted for the monitoring period ending January 31, 2007. | |

- 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	06/23/2004	(359511)
2	07/19/2004	(359512)
3	09/22/2004	(359516)
4	10/21/2004	(359513)
5	10/21/2004	(359517)
6	11/22/2004	(386023)
7	12/20/2004	(386024)
8	01/26/2005	(386026)
9	03/14/2005	(386021)
10	03/14/2005	(386022)
11	04/25/2005	(423923)
12	05/23/2005	(423924)

13	06/17/2005	(423925)
14	07/18/2005	(444725)
15	08/19/2005	(444726)
16	09/15/2005	(444727)
17	10/09/2005	(475546)
18	11/21/2005	(475547)
19	12/16/2005	(475548)
20	01/17/2006	(475549)
21	02/21/2006	(475545)
22	03/20/2006	(475544)
23	04/20/2006	(502971)
24	06/22/2006	(502972)
25	07/28/2006	(525308)
26	09/20/2006	(525309)
27	09/20/2006	(525310)
28	11/27/2006	(584920)
29	12/21/2006	(584921)
30	01/05/2007	(584922)
31	02/21/2007	(584915)
32	03/22/2007	(584916)
33	04/23/2007	(584917)
34	05/23/2007	(584918)
35	05/24/2007	(584918)
36	05/25/2007	(584914)
37	05/25/2007	(584919)
38	06/26/2007	(584835)
39	08/02/2007	(604382)
40	08/28/2007	(604383)
41	08/21/2007	(604384)
42	10/22/2007	(623412)
43	12/05/2007	(623413)
44	01/07/2008	(674743)
45	01/24/2008	(674744)
46	03/11/2008	(693060)
47	03/11/2008	(693061)
48	04/23/2008	(693062)
49	05/19/2008	(693063)
50	05/20/2008	(653927)
51	05/30/2008	(693064)
52	07/18/2008	(714285)
53	09/02/2008	(714286)
54	09/15/2008	(714287)
55	10/20/2008	(714288)
56	12/08/2008	(730276)
57	12/10/2008	(730275)
58	01/14/2009	(723634)
59	01/14/2009	(730277)
60	03/10/2009	(737655)
61	05/20/2009	(739872)

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

Date:	03/31/2005 (423923)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/31/2005 (423925)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2006 (584914)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2006 (502971)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/30/2006 (475545)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2006 (584921)	CN600803456	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		

Date:	12/31/2006	(584922)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	01/31/2007	(584915)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	02/28/2007	(584916)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	03/31/2007	(584917)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	04/30/2007	(584918)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	05/25/2007	(554760)	CN600803456		
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(1)(B) 30 TAC Chapter 305, SubChapter F 305.125(1)(C) Sludge Provisions, Section III PERMIT				
Description:	Failure to submit the annual sludge reports for 2005 and 2006.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.6(b)(3) Effluent Limitations and Monitoring Req. PERMIT				
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) Monitoring and Reporting Requirements PERMIT				
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) Effluent Limitations and Monitoring Req. PERMIT				
Description:	Failure to maintain compliance with the permitted effluent limits for TSS and pH.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Monitoring and Reporting Requirements PERMIT				
Description:	Failure to provide notification of effluent permit limit violations.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Final Effluent Limitations PERMIT				
Description:	Failure to maintain compliance with permitted effluent limits.				
Self Report?	NO			Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Other Requirements PERMIT				
Description:	Failure to achieve compliance with final permitted effluent limitations in accordance with the schedule in the permit.				
Date:	05/31/2007	(693064)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	06/30/2007	(6043B2)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	08/31/2007	(6043B4)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	09/30/2007	(623412)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	10/31/2007	(623413)	CN600803456		
Self Report?	YES			Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				

Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	11/30/2007	(674743)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	12/31/2007	(674744)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	01/31/2008	(693060)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	03/31/2008	(693062)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	04/30/2008	(693063)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008	(714285)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	09/30/2008	(714286)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	11/30/2008	(730276)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	12/31/2008	(730277)	CN600803456
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1) 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
RN102076296**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0877-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 the Texas Department of Transportation ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located along and within the right-of-way of Interstate Highway 35 East, at a point approximately 1.4 miles north of Farm-to-Market Road 329 in Ellis County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 27, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand One Hundred Forty Dollars (\$5,140) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

One Thousand Twenty-Eight Dollars (\$1,028) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Four Thousand One Hundred Twelve Dollars (\$4,112) shall be conditionally offset by the Respondent'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 the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On May 7, 2009, submitted the discharge monitoring report ("DMR") for the monitoring period ending May 31, 2008 and the 2008 annual sludge report to the TCEQ; and
 - b. On May 14, 2009, submitted documentation that a staff gauge had been installed to measure the effluent flow rate at Outfall 001.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator the Facility, the Respondent is alleged to have:

1. Failed to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 7.c, as documented during a compliance investigation conducted on March 24, 2009. Specifically, the biochemical oxygen demand daily average exceeded the permit effluent limit by 40% or more during June 2008 and December 2008 and the total suspended solids daily average during December 2008, exceeded the permit effluent limit by 40% or more, and the TCEQ was not notified.

2. Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011959001, Sludge Provisions, as documented during a compliance investigation conducted on March 24, 2009.
3. Failed to provide a legible staff gauge to measure the effluent flow rate at Outfall 001, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011959001, Operational Requirements No. 5, as documented during an investigation conducted on March 24, 2009. Specifically, the primary and secondary flow measuring devices for Outfall 001 include a 22.5 degree V-notch weir and an Ultrasonic OCM III Open Channel Flow Monitor; however, no staff gauge was present.
4. Failed to timely submit the DMR for the monitoring period ending May 31, 2008, by the 20th day of the following month, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011959001, Monitoring and Reporting Requirements No. 1, as documented during an investigation conducted on March 24, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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. 2009-0877-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 Respondent shall implement and complete an SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Four Thousand One Hundred Twelve Dollars (\$4,112) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent'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 Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update operational guidance to ensure that exceedances of the permitted effluent limits by 40% or more are properly reported to the TCEQ; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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 76118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 Respondent 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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



For the Executive Director

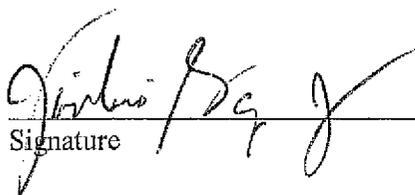
10/20/2009
Date

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

9/22/09
Date

Toribio Garza, Jr.
Name (Printed or typed)
Authorized Representative of
Texas Department of Transportation

Maintenance Division Director
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: 2009-0877-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Texas Department of Transportation
Payable Penalty Amount:	Four Thousand One Hundred Twelve Dollars (\$4,112)
SEP Amount:	Four Thousand One Hundred Twelve Dollars (\$4,112)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or 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, Suite 510
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 each 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:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
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.

