EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1373-MWD-E **TCEQ ID:** RN100844802 **CASE NO.:** 36426

RESPONDENT NAME: City of Kerrville

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

SITE WHERE VIOLATION(S) OCCURRED: Kerrville Wastewater Plant, located at 3650 Loop 534, at the end of Beach Street, on the City Farm, in the southeast section of the City of Kerrville, Kerr County

TYPE OF OPERATION: Wastewater treatment facility

SMALL BUSINESS: ___ Yes X No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 12, 2009. No comments were received.

CONTACTS AND MAILING LIST:

SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Lauren Smitherman, Enforcement Division, Enforcement Team 1, MC169, (512) 239-5223; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Donald B. Davis, Interim City Manager, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028
Mr. Paul Hofmann, City Manager, City of Kerrville, 800 Junction Highway, Kerrville, Texas 78028
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Record Review Relating to this Case:** July 23, 2008 **Date of NOE Relating to this Case:** August 5, 2008 (NOE) **Background Facts:** This was a record review. **WATER** Failure to comply with the permitted effluent limitations for ammonia nitrogen, carbonaceous biochemical oxygen demand, and flow [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010576001, Effluent Limitations and Monitoring Requirements No. 1].	**Total Assessed:** $12,300 **Total Deferred:** $2,460 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $9,840 **Total Paid (Due) to General Revenue:** $0 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the City has implemented the following corrective measures: a) By April 30, 2008, repaired one of four baffles in the oxidation ditch at the Facility; b) On May 1, 2008, removed from the Facility a research and development pilot plant believed to be the root cause of plant upsets in February and March of 2008; c) By May 31, 2008, installed two floating aerators in the oxidation ditch at the Facility; and d) During June 2008, achieved compliance with permitted effluent limitations. **Ordering Provisions:** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).

Additional ID No(s).: WQ0010576001

Attachment A
Docket Number: 2008-1373-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**City of Kerrville**
Payable Penalty Amount:	**Nine Thousand Eight Hundred Forty Dollars ($9,840)**
SEP Amount:	**Nine Thousand Eight Hundred Forty Dollars ($9,840)**
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:	**Kerr 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 Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds 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 Third-Party recipient shall use a consistent and documented system for determining eligible participants.

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.

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

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:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

Thereafter, Respondent shall make each additional contribution by the 15th day of each month.

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:

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)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision June 12, 2008*

DATES					
Assigned	11-Aug-2008				
PCW	27-Aug-2008	Screening	22-Aug-2008	EPA Due	5-Sep-2008

RESPONDENT/FACILITY INFORMATION

Respondent	City of Kerrville		
Reg. Ent. Ref. No.	RN100844802		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	36426	No. of Violations	1
Docket No.	2008-1373-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Mark Oliver
		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* $7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 89.0% Enhancement — *Subtotals 2, 3, & 7* $6,675

Notes: The penalty is enhanced due to twelve self-reported effluent violations, two NOVs with unrelated violations, and one final enforcement order without a denial of liability.

Culpability: No — 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $1,875

Economic Benefit — 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $3,418
Approx. Cost of Compliance $45,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $12,300

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $12,300

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $12,300

DEFERRAL 20.0% Reduction — *Adjustment* -$2,460

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 $9,840

Screening Date 22-Aug-2008 **Docket No.** 2008-1373-MWD-E **PCW**

Respondent City of Kerrville

Policy Revision 2 (September 2002)

Case ID No. 36426

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN100844802

Media [Statute] Water Quality

Enf. Coordinator Mark Oliver

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*)	12	60%
	Other written NOVs	2	4%
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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 89%

>> 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 penalty is enhanced due to twelve self-reported effluent violations, two NOVs with unrelated violations, and one final enforcement order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 89%

PCW

Policy Revision 2 (September 2002)
PCW Revision June 12, 2008

Screening Date	22-Aug-2008
Docket No.	2008-1373-MWD-E
Respondent	City of Kerrville
Case ID No.	36426
Reg. Ent. Reference No.	RN100844802
Media [Statute]	Water Quality
Enf. Coordinator	Mark Oliver
Violation Number	1
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010576001, Effluent Limitations and Monitoring Requirements No. 1
Violation Description	Failed to comply with the permitted effluent limitations, as documented during a record review conducted on July 23, 2008 and shown in the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 3 — 213 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $7,500

Three quarterly events are recommended.

Good Faith Efforts to Comply

25.0% Reduction — $1,875

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent achieved compliance during June 2008.

Violation Subtotal $5,625

Economic Benefit (EB) for this violation

Estimated EB Amount $3,418

Statutory Limit Test

Violation Final Penalty Total $12,300

This violation Final Assessed Penalty (adjusted for limits) $12,300

Economic Benefit Worksheet

Respondent City of Kerrville
Case ID No. 36426
Reg. Ent. Reference No. RN100844802
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$45,000	31-May-2007	30-Jun-2008	1.08	$163	$3,255	$3,418
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: Equipment costs include purchase and installation of one floating aerator and repair of one baffle. Date required is the first month of noncompliance. Final date is the date compliance was achieved.

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: $45,000

TOTAL: $3,418

EFFLUENT VIOLATION TABLE City of Kerrville TPDES Permit No. WQ0010576001 Docket No. 2008-1373-MWD-E				
Months	NH3-N Daily Avg. Conc. Limit = 2 mg/L	NH3-N Max. Conc. Limit = 7 mg/L	CBOD Daily Max. Conc. Limit = 13 mg/L	Peak Flow 2-Hour Max. Limit = 4,861 gpm
5/31/2007	C	C	C	7,793
6/30/2007	C	C	22.00	5,442
7/31/2007	C	C	C	5,901
8/31/2007	C	C	C	7,413
9/30/2007	C	C	C	5,464
2/29/2008	4.39	12.15	C	C
3/31/2008	2.07	11.80	C	C

Avg. = average
C = compliant
CBOD = carbonaceous biochemical oxygen demand
Conc. = concentration
gpm = gallons per minute
Max. = maximum
mg/L = milligrams per liter
NH3-N = ammonia nitrogen

Compliance History

Customer/Respondent/Owner-Operator:	CN600522858	City of Kerrville	Classification: AVERAGE	Rating: 2.63
Regulated Entity:	RN100844802	KERRVILLE WASTEWATER PLANT	Classification: AVERAGE	Site Rating: 1.51

ID Number(s):			
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	KF0093C
	WASTEWATER	PERMIT	WQ0010576001
	WASTEWATER	EPA ID	TX0047333
	WASTEWATER	PERMIT	TPDES0047333
	WASTEWATER	PERMIT	TX0047333

Location: 3650 Loop 534, at the end of Beach Street, on the City Farm, in the southeast section of Kerrville, in Kerr County, Texas

Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: August 22, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 22, 2003 to August 22, 2008

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

Name: Mark Oliver Phone: 512-239-3308

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 Effective Date: 03/05/2007 ADMINORDER 2006-1021-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: Failure to comply with permit effluent limits.

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	09/15/2003	(356215)
2	10/20/2003	(356217)
3	11/18/2003	(356219)
4	12/12/2003	(356221)
5	01/13/2004	(356222)
6	03/17/2004	(356207)
7	04/22/2004	(356208)
8	05/10/2004	(305657)
9	05/14/2004	(356210)
10	06/02/2004	(269284)
11	06/17/2004	(356211)

12	07/21/2004	(356212)
13	08/18/2004	(356214)
14	09/16/2004	(356216)
15	10/14/2004	(356218)
16	10/25/2004	(356209)
17	11/10/2004	(356223)
18	11/16/2004	(356220)
19	12/16/2004	(384157)
20	02/16/2005	(384156)
21	03/14/2005	(422083)
22	04/14/2005	(422084)
23	05/17/2005	(422085)
24	06/16/2005	(422086)
25	07/29/2005	(442967)
26	08/17/2005	(442968)
27	09/14/2005	(442969)
28	10/17/2005	(472526)
29	11/16/2005	(472527)
30	12/21/2005	(472528)
31	12/21/2005	(472525)
32	01/25/2006	(472529)
33	02/16/2006	(472522)
34	03/09/2006	(472523)
35	04/17/2006	(472524)
36	05/31/2006	(462572)
37	07/14/2006	(484358)
38	08/07/2006	(489746)
39	02/20/2007	(580684)
40	03/19/2007	(580685)
41	04/23/2007	(557766)
42	05/17/2007	(543989)
43	09/24/2007	(595305)
44	10/09/2007	(596221)
45	02/13/2008	(673550)
46	03/18/2008	(691819)
47	06/19/2008	(681873)
48	08/07/2008	(687584)

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

Date: 06/02/2004 (269284)

Self Report? NO Classificati Moderate

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

Description: Failure of the facility operator to maintain calibration records for the chlorine meter utilized at the wastewater treatment facility.

Date: 09/30/2005 (472526)

Self Report? YES Classificati 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: 10/31/2005 (472527)

Self Report? YES Classificati 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 (472522)

Self Report? YES Classificati 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: 02/28/2006 (472523)
Self Report? YES Classificati 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 (472524)
Self Report? YES Classificati 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: 05/30/2006 (462572)
Self Report? NO Classificati Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
Description: Failure of the permittee to properly complete DMR's and MER's pertaining to the number of exceedances for Daily Maximums, Daily Minimums or 7-day (weekly) average permit limits.

Self Report? NO Classificati Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)
Description: Failure of the City of Kerrville laboratory to properly report CBOD5 results during the month of February 2006. Laboratory values were reported as >10 mg/l.

Date: 05/31/2007
Self Report? YES Classificati 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
Self Report? YES Classificati 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: 07/31/2007
Self Report? YES Classificati 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
Self Report? YES Classificati 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
Self Report? YES Classificati 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: 02/29/2008 (691819)
Self Report? YES Classificati 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: 03/31/2008
Self Report? YES Classificati 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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING CITY OF KERRVILLE RN100844802	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1373-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 City of Kerrville ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment facility located at 3650 Loop 534, at the end of Beach Street, on the City Farm, in the southeast section of Kerrville, in Kerr County, Texas (the "Facility").

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

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

4. The City received notice of the violations alleged in Section II ("Allegations") on or about August 10, 2008.

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

6. An administrative penalty in the amount of Twelve Thousand Three Hundred Dollars ($12,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Four Hundred Sixty Dollars ($2,460) is deferred contingent upon the City'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. Nine Thousand Eight Hundred Forty Dollars ($9,840) shall be conditionally offset by the City'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 City 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 City has implemented the following corrective measures:

   a. By April 30, 2008, repaired one of four baffles in the oxidation ditch at the Facility;

   b. On May 1, 2008, removed from the Facility a research and development pilot plant believed to be the root cause of plant upsets in February and March of 2008;

   c. By May 31, 2008, installed two floating aerators in the oxidation ditch at the Facility; and

   d. During June 2008, achieved compliance with permitted effluent limitations.

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 City 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 of the Facility, the City is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010576001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on July 23, 2008, and shown in the following table:

EFFLUENT VIOLATION TABLE				
Months	NH3-N Daily Avg. Conc.	NH3-N Max. Conc.	CBOD Daily Max. Conc.	Peak Flow 2-Hour Max.
	Limit = 2 mg/L	Limit = 7 mg/L	Limit = 13 mg/L	Limit = 4,861 gpm
5/31/2007	C	C	C	7,793
6/30/2007	C	C	22.00	5,442
7/31/2007	C	C	C	5,901
8/31/2007	C	C	C	7,413
9/30/2007	C	C	C	5,464
2/29/2008	4.39	12.15	C	C
3/31/2008	2.07	11.80	C	C

Avg. = average
C = compliant
CBOD = carbonaceous biochemical oxygen demand
Conc. = concentration
gpm = gallons per minute
Max. = maximum
mg/L = milligrams per liter
NH3-N = ammonia nitrogen

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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: City of Kerrville, Docket No. 2008-1373-MWD-E" to:

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

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Nine Thousand Eight Hundred Forty Dollars ($9,840) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.

4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, 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

Date 12/15/2008

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

Date 11/6/08

DONALD B. DAVIS
Name (Printed or typed)
Authorized Representative of
City of Kerrville

INTERIM CITY MGR
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: 2008-1373-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**City of Kerrville**
Payable Penalty Amount:	**Nine Thousand Eight Hundred Forty Dollars ($9,840)**
SEP Amount:	**Nine Thousand Eight Hundred Forty Dollars ($9,840)**
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:	**Kerr 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 Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds 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 Third-Party recipient shall use a consistent and documented system for determining eligible participants.

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.

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

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:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

Thereafter, Respondent shall make each additional contribution by the 15th day of each month.

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:

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.