

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1390-MWD-E **TCEQ ID:** RN101918423 **CASE NO.:** 34408
RESPONDENT NAME: City of Rosebud

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: City of Rosebud Wastewater Treatment Plant, located approximately 0.9 miles west of the intersection of U.S. Highway 77 and Farm-to-Market Road 1963, approximately 1000 feet south of Farm-to-Market Road 53, Falls County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There are no 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 March 9, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Ken Hensel, Mayor, City of Rosebud, P.O. Box 657, Rosebud, Texas 76570 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review Relating to this Case: June 13, 2007</p> <p>Date of NOE Relating to this Case: July 18, 2007 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permit effluent limits for total suspended solids and total chlorine [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. 10731001, Effluent Limitations and Monitoring Requirements No. 1 and 2].</p>	<p>Total Assessed: \$3,825</p> <p>Total Deferred: \$765 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,060</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 achieved compliance with the permitted effluent limitations during March 2007, by modifying the wasting schedule and increasing the monitoring and maintenance efforts.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p>

Additional ID No(s): WQ0010731001

Attachment A
Docket Number: 2007-1390-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Rosebud
Penalty Amount: Three Thousand Sixty Dollars (\$3,060)
SEP Offset Amount: Three Thousand Sixty Dollars (\$3,060)
Type of SEP: Custom with pre-approved concept (2 projects)
Location of SEP: Falls County

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

1. Project Description

A. Description

Project 1 – Erosion Control

The Respondent shall perform an erosion control project at three locations in Falls County. The Respondent shall regrade the slopes of the creek or waterway banks and plant vegetation or other approved non-eroding materials to prevent further erosion and siltation, as well as to reduce the likelihood of downstream flooding. The erosion currently is causing turbidity and sedimentation. The Respondent shall utilize city employees to perform regrading, seeding, and/or installation of materials, and shall encourage the growth of the vegetation.

The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. To the extent it can be documented, the Respondent will receive credit for the overtime hours its employees and equipment are used in implementing the SEP. The Respondent will not receive credit for gratuities and/or inducements for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations, including compliance with any requirements to obtain permits or authorizations.

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.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

The Respondent shall repair or replace sanitary sewer service lines, cleanouts, and caps on approximately 3 residences of low to moderate-income homeowners in Falls County. The project will reduce inflow and infiltration into the sanitary sewer collection system and help prevent stoppages and backups of sewage into residential areas. The Respondent shall not charge the homeowners for the costs of the SEP.

The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. To the extent it can be documented, the Respondent will receive credit for the overtime hours its employees and equipment are used in implementing the SEP. The Respondent will not receive credit for gratuities and/or inducements for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations, including compliance with any requirements to obtain permits or authorizations.

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

Project 1 – Erosion Control

This SEP will provide a discernible environmental benefit by reducing both erosion and downstream flooding. Erosion and siltation can do two things to increase waterway pollution: 1) divert water flows, initiating further erosion downstream; and 2) pollute waterways with turbid silt. The grasses to be planted along the dam area will assist in holding the soil in place without significantly impeding the flow of the water. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

This SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as basements, lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

C. Minimum Expenditure

Project 1 – Erosion Control

The Respondent shall spend at least \$1,530 of the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

The Respondent shall spend at least \$1,530 of the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

2. Performance Schedule

Project 1 – Erosion Control

Within 90 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall complete the project within 365 days after the effective date of this Agreed Order and provide a final report in accordance with Item 3.B., below.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

Within 180 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall complete the project within 365 days after the effective date of this Agreed Order and provide a final report in accordance with Item 3.B., below.

3. Reporting

A. Progress Reports

Project 1 – Erosion Control

Within 120 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

Within 210 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 30 days after completion of the each project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Map showing specific location of area addressed;
5. Photographs of the project showing the project area before commencement and after the project is complete); and
6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

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

In the event of incomplete performance, with the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The payment for any amount due if the SEP is not completed shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	23-Jul-2007	Screening	1-Aug-2007	EPA Due	
	PCW	9-Oct-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Rosebud
Reg. Ent. Ref. No.	RN101918423
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34408	No. of Violations	1	
Docket No.	2007-1390-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Heather Brister	
Multi-Media		EC's Team	EnforcementTeam 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	57% Enhancement	Subtotals 2, 3, & 7	\$1,710
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Notes
The Respondent self-reported 11 months of effluent violations and received one notice of violations for violations that are not considered to be same or similar to those cited in this action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	25% Reduction	Subtotal 5	\$750
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes
The Respondent achieved compliance with their permitted effluent limits during March 2007 by modifying the wasting schedule and increasing monitoring and maintenance efforts.

Total EB Amounts	\$75	0% Enhancement	Subtotal 6	\$0
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Approx. Cost of Compliance \$2,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,960
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-3%	Adjustment	-\$135
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes
Recommended reduction to prevent the self-reported violations from overly impacting the penalty.

Final Penalty Amount	\$3,825
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,825
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DEFERRAL	20% Reduction	Adjustment	-\$765
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes
Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,060
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Screening Date 1-Aug-2007

Docket No. 2007-1390-MWD-E

PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 34408

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101918423

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	11	55%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 57%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent self-reported 11 months of effluent violations and received one notice of violations for violations that are not considered to be same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 57%

Screening Date 1-Aug-2007 **Docket No.** 2007-1390-MWD-E **PCW**
Respondent City of Rosebud *Policy Revision 2 (September 2002)*
Case ID No. 34408 *PCW Revision June 26, 2007*
Reg. Ent. Reference No. RN101918423
Media [Statute] Water Quality
Enf. Coordinator Heather Brister

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes
Adjustment:

Adjustment:

Violation Events

Number of Violation Events **Number of violation days**
mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$75"/>	Violation Final Penalty Total <input type="text" value="\$3,825"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,825"/>	

Economic Benefit Worksheet

Respondent City of Rosebud
 Case ID No. 34408
 Reg. Ent. Reference No. RN101918423
 Media Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Item Description	Item Cost	Date Required	Final Date	Yrs.	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	30-Jun-2006	31-Mar-2007	0.8	\$75	n/a	\$75

Notes for DELAYED costs: Estimated cost for additional wasting schedule, monitoring, and maintenance, which alleviated the noncompliance. Date Required is the initial month of noncompliance. Final Date is the date the Respondent returned to compliance.

Avoided Costs

Item Description	Item Cost	Date Required	Final Date	Yrs.	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$2,000	TOTAL	\$75
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Effluent Limit Violation Table

table rev.

Respondent	City of Rosebud
ID Number(s)	TPDES Permit No. 10731001
Docket Number	2007-1390-MWD-E
Enf. Coordinator	Heather Brister

Corresponds to Violation Number: 1

<i>EFFLUENT PARAMETER</i>				
<i>Permit Limit</i>				
	Total Suspended Solids Daily Average 15 Milligrams per Liter	Total Suspended Solids Daily Average Loading 31 Pounds per Day	Total Chlorine Residual Minimum 1.0 Milligrams per Liter	Total Chlorine Residual Maximum 4.0 Milligrams per Liter
<i>Month/Year</i>				
Jun-06	c	c	0.91	c
Jul-06	c	c	0.99	c
Aug-06	c	c	c	4.28
Sep-06	c	c	0.99	c
Nov-06	21.6	c	c	c
Feb-07	22.75	32.47	c	c

c = compliant

Compliance History

Customer/Respondent/Owner-Operator:	CN600241574	City of Rosebud	Classification: AVERAGE	Rating: 2.11
Regulated Entity:	RN101918423	CITY OF ROSEBUD	Classification: AVERAGE	Site Rating: 0.31
ID Number(s):	WASTEWATER	PERMIT	WQ0010731001	
	WASTEWATER	PERMIT	TPDES0023981	
	WASTEWATER	PERMIT	TX0023981	
	WASTEWATER LICENSING	LICENSE	WQ0010731001	
Location:	Located approximately 0.9 miles west of the intersection of U.S. Highway 77 and Farm-to-Market Road 1963, approximately 1000 feet south of Farm-to-Market Road 53 in Falls County, Texas			

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

TCEQ Region: REGION 09 - WACO
 Date Compliance History Prepared: July 30, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: July 30, 2002 to July 30, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Heather Brister Phone: 512-239-1203

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 N/A

B. Any criminal convictions of the state of Texas and the federal government.
 N/A

C. Chronic excessive emissions events.
 N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 08/20/2002 | (168994) |
| 2 | 10/17/2002 | (168999) |
| 3 | 11/14/2002 | (169002) |
| 4 | 12/12/2002 | (169005) |
| 5 | 01/15/2003 | (169009) |
| 6 | 02/10/2003 | (168974) |
| 7 | 03/18/2003 | (168977) |
| 8 | 04/22/2003 | (168982) |
| 9 | 05/19/2003 | (299948) |
| 10 | 06/16/2003 | (299949) |
| 11 | 07/17/2003 | (299951) |
| 12 | 09/16/2003 | (299953) |
| 13 | 09/22/2003 | (299952) |
| 14 | 10/20/2003 | (299954) |
| 15 | 11/20/2003 | (299955) |
| 16 | 12/09/2003 | (299956) |
| 17 | 01/22/2004 | (299957) |
| 18 | 02/18/2004 | (299945) |
| 19 | 03/18/2004 | (299946) |
| 20 | 04/26/2004 | (299947) |
| 21 | 05/13/2004 | (353961) |
| 22 | 06/14/2004 | (299950) |
| 23 | 07/16/2004 | (353962) |
| 24 | 08/24/2004 | (353963) |
| 25 | 09/28/2004 | (353964) |
| 26 | 10/18/2004 | (353965) |
| 27 | 10/28/2004 | (338042) |
| 28 | 11/29/2004 | (382888) |

29 12/13/2004 (382889)
 30 01/20/2005 (382890)
 31 02/17/2005 (420691)
 32 03/21/2005 (382887)
 33 04/19/2005 (420692)
 34 05/23/2005 (420693)
 35 06/24/2005 (420694)
 36 07/22/2005 (441698)
 37 09/21/2005 (441700)
 38 09/29/2005 (441699)
 39 10/25/2005 (470176)
 40 11/29/2005 (470177)
 41 12/22/2005 (470178)
 42 01/20/2006 (470179)
 43 02/28/2006 (470174)
 44 03/24/2006 (470175)
 45 04/20/2006 (499313)
 46 05/18/2006 (499314)
 47 06/12/2006 (499315)
 48 07/13/2006 (521358)
 49 09/11/2006 (521360)
 50 09/26/2006 (521359)
 51 10/06/2006 (545890)
 52 11/06/2006 (545891)
 53 12/15/2006 (545892)
 54 07/18/2007 (564211)

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

Date: **05/31/2003** (299949)
 Self Report? **YES** Classification: **Moderate**

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

Date: **06/16/2004** (274343)
 Self Report? **NO** Classification: **Moderate**

Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)[G]
 Rqmt Prov: PERMIT WQ0010731-001
 Description: Failure by the permittee to orally notify the TCEQ of an unauthorized discharge within 24 hours and provide written notification within 5 days of becoming aware of the noncompliance.

Date: **06/30/2004** (353962)
 Self Report? **YES** Classification: **Moderate**

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

Date: **11/30/2005** (470178)
 Self Report? **YES** Classification: **Moderate**

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

Date: **01/31/2006** (470174)
 Self Report? **YES** Classification: **Moderate**

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

Date: **02/28/2006** (470175)
 Self Report? **YES** Classification: **Moderate**

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

Date: 06/30/2006 (521358)		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		
Date: 07/31/2006 (521359)		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		
Date: 08/31/2006 (521360)		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		
Date: 09/30/2006 (545890)		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		
Date: 11/30/2006 (545892)		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		
Date: 02/28/2007		
Self Report? YES		Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]		
Description: Failure to meet the limit for one or more permit parameter		

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- 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 ROSEBUD
RN101918423

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1390-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 Rosebud ("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 plant located approximately 0.9 miles west of the intersection of U.S. Highway 77 and Farm-to-Market Road 1963, approximately 1000 feet south of Farm-to-Market Road 53 in Falls 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 July 23, 2007.
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 Three Thousand Eight Hundred Twenty-Five Dollars (\$3,825) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Three Thousand Sixty Dollars (\$3,060) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP"), and Seven Hundred Sixty-Five Dollars (\$765) 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. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the 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 achieved compliance with the permitted effluent limitations during March 2007, by modifying the wasting schedule and increasing the monitoring and maintenance efforts.
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 permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10731001, Effluent Limitations and Monitoring Requirements No. 1 and 2, as documented by a record review conducted on June 13, 2007, and as shown in the following table:

EFFLUENT PARAMETER				
Permit Limit				
	Total Suspended Solids Daily Average 15 Milligrams per Liter	Total Suspended Solids Daily Average Loading 31 Pounds per Day	Total Chlorine Residual Minimum 1.0 Milligrams per Liter	Total Chlorine Residual Maximum 4.0 Milligrams per Liter
<i>Month/Year</i>				
Jun-06	c	c	0.91	c
Jul-06	c	c	0.99	c
Aug-06	c	c	c	4.28
Sep-06	c	c	0.99	c
Nov-06	21.6	c	c	c
Feb-07	22.75	32.47	c	c

c = compliance

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 Rosebud, Docket No. 2007-1390-MWD-E" to:

Texas Commission on Environmental Quality
Attention: Heather Brister
6801 Sanger Ave., Ste. 2500
Waco, Texas 76710-7826
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, Three Thousand Sixty Dollars (\$3,060) 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 the City 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.

Attachment A
Docket Number: 2007-1390-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Rosebud
Penalty Amount: Three Thousand Sixty Dollars (\$3,060)
SEP Offset Amount: Three Thousand Sixty Dollars (\$3,060)
Type of SEP: Custom with pre-approved concept (2 projects)
Location of SEP: Falls County

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

1. Project Description

A. Description

Project 1 – Erosion Control

The Respondent shall perform an erosion control project at three locations in Falls County. The Respondent shall regrade the slopes of the creek or waterway banks and plant vegetation or other approved non-eroding materials to prevent further erosion and siltation, as well as to reduce the likelihood of downstream flooding. The erosion currently is causing turbidity and sedimentation. The Respondent shall utilize city employees to perform regrading, seeding, and/or installation of materials, and shall encourage the growth of the vegetation.

The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. To the extent it can be documented, the Respondent will receive credit for the overtime hours its employees and equipment are used in implementing the SEP. The Respondent will not receive credit for gratuities and/or inducements for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations, including compliance with any requirements to obtain permits or authorizations.

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.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

The Respondent shall repair or replace sanitary sewer service lines, cleanouts, and caps on approximately 3 residences of low to moderate-income homeowners in Falls County. The project will reduce inflow and infiltration into the sanitary sewer collection system and help prevent stoppages and backups of sewage into residential areas. The Respondent shall not charge the homeowners for the costs of the SEP.

The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. To the extent it can be documented, the Respondent will receive credit for the overtime hours its employees and equipment are used in implementing the SEP. The Respondent will not receive credit for gratuities and/or inducements for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations, including compliance with any requirements to obtain permits or authorizations.

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

Project 1 – Erosion Control

This SEP will provide a discernible environmental benefit by reducing both erosion and downstream flooding. Erosion and siltation can do two things to increase waterway pollution: 1) divert water flows, initiating further erosion downstream; and 2) pollute waterways with turbid silt. The grasses to be planted along the dam area will assist in holding the soil in place without significantly impeding the flow of the water. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

This SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as basements, lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

C. Minimum Expenditure

Project 1 – Erosion Control

The Respondent shall spend at least \$1,530 of the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

The Respondent shall spend at least \$1,530 of the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

2. Performance Schedule

Project 1 – Erosion Control

Within 90 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall complete the project within 365 days after the effective date of this Agreed Order and provide a final report in accordance with Item 3.B., below.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

Within 180 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall complete the project within 365 days after the effective date of this Agreed Order and provide a final report in accordance with Item 3.B., below.

3. Reporting

A. Progress Reports

Project 1 – Erosion Control

Within 120 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Project 2 – Repair Wastewater Lines for Low to Mid-Income Individuals

Within 210 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

B. Final Report

Within 30 days after completion of the each project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Map showing specific location of area addressed;
5. Photographs of the project showing the project area before commencement and after the project is complete); and
6. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

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

In the event of incomplete performance, with the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The payment for any amount due if the SEP is not completed shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.

