

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1871-MWD-E **TCEQ ID:** RN101702405 **CASE NO.:** 36891

RESPONDENT NAME: City of Houston

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: Metro Central WWTP, located approximately 1.6 miles east-northeast of the intersection of Farm-to-Market Road 1959 and Interstate Highway 45, adjacent to the southeast corner of Ellington Air Field, Harris 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 May 4, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Bill White, Mayor, City of Houston, P.O. Box 262549, Houston, Texas 77207 Mr. Michael S. Marcotte, P.E., D.WRE., BCEE, Director, City of Houston, P.O. Box 262549, Houston, Texas 77207 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: November 7, 2008</p> <p>Date of NOV/NOE Relating to this Case: November 17, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10495136 and is continuing to discharge without authorization [30 TEX. ADMIN. CODE §§ 305.125(2) and 305.65 and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$7,800</p> <p>Total Deferred: \$1,560 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$6,240</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on November 5, 2008, the Respondent submitted an administratively complete permit application for authorization for discharge wastewater under a TPDES permit.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 10495136;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. Written certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0010495136

Attachment A
Docket Number: 2008-1871-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Houston

Payable Penalty Amount: Six Thousand Two Hundred Forty Dollars (\$6,240)

SEP Amount: Six Thousand Two Hundred Forty Dollars (\$6,240)

Type of SEP: Pre-approved

Third-Party Recipient: Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project

Location of SEP: Harris 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 pay for the labor and materials costs associated with conducting prescribed burns, removing non-native trees, and for planting native trees and plants.

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 increasing ecosystem functionality. It will contribute to the overall prairie health by suppressing invasive brush species, increasing soil fertility, and promoting plant vigor.

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:

Armand Bayou Nature Center
Attn: Mark Kramer
PO Box 58828
Houston, Texas 77258

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 ATexas 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

DATES	Assigned	24-Nov-2008	Screening	26-Nov-2008	EPA Due	
	PCW	3-Dec-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Houston
Reg. Ent. Ref. No.	RN101702405
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36891	No. of Violations	1
Docket No.	2008-1871-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Steve Villatoro
		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
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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	4.0% Enhancement	Subtotals 2, 3, & 7	\$300
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Notes: The penalty is enhanced due to two self-reported monthly effluent violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$233
 Approx. Cost of Compliance: \$3,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,800
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$7,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,800
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,560
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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	\$6,240
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Screening Date 26-Nov-2008

Docket No. 2008-1871-MWD-E

PCW

Respondent City of Houston

Policy Revision 2 (September 2002)

Case ID No. 36891

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101702405

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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

Adjustment Percentage (Subtotal 2) 4%

>> **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 two self-reported monthly effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 26-Nov-2008 Respondent City of Houston Case ID No. 36891 Reg. Ent. Reference No. RN101702405 Media [Statute] Water Quality Enf. Coordinator Steve Villatoro Violation Number <input type="text" value="1"/> Rule Cite(s) <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">30 Tex. Admin. Code §§ 305.125(2) and 305.65 and Tex. Water Code § 26.121(a)</div> Violation Description <div style="border: 1px solid black; padding: 5px; margin-top: 5px;">Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10495136 and is continuing to discharge without authorization.</div>	Docket No. 2008-1871-MWD-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;">Policy Revision 2 (September 2002) PCW Revision October 30, 2008</div>																							
Base Penalty <input type="text" value="\$10,000"/>																								
>> Environmental, Property and Human Health Matrix																								
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2"></th> <th colspan="3" style="text-align: center;">Harm</th> <th></th> </tr> <tr> <th colspan="2" style="text-align: left;">Release</th> <th style="text-align: center;">Major</th> <th style="text-align: center;">Moderate</th> <th style="text-align: center;">Minor</th> <th></th> </tr> </thead> <tbody> <tr> <td style="text-align: right;">Actual</td> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: right;">Potential</td> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </tbody> </table>			Harm				Release		Major	Moderate	Minor		Actual		<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential		<input type="text"/>	<input type="text"/>	<input type="text"/>
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Three monthly events are recommended from the date the permit expired on September 1, 2008 to the date of screening on November 26, 2008																								
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N/A	x	(mark with x)																						
Notes	<div style="border: 1px solid black; padding: 5px; margin-top: 5px;">The Respondent does not meet the good faith criteria for this violation.</div>																							
Violation Subtotal <input type="text" value="\$7,500"/>																								
Economic Benefit (EB) for this violation																								
Estimated EB Amount	<input type="text" value="\$233"/>																							
Statutory Limit Test																								
Violation Final Penalty Total	<input type="text" value="\$7,800"/>																							
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,800"/>																								

Economic Benefit Worksheet

Respondent City of Houston
Case ID No. 36891
Reg. Ent. Reference No. RN101702405
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
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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$3,500	1-Sep-2008	31-Dec-2009	1.33	\$233	n/a	\$233
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs of preparing and submitting a new permit application to obtain authorization to discharge wastewater. Date required is the date the permit expired and Final Date is projected date to obtain a new permit.

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

\$3,500

TOTAL:

\$233

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600128995	City of Houston	Classification: AVERAGE	Rating: 2.24
Regulated Entity:	RN101702405	METRO CENTRAL WWTP	Classification: HIGH	Site Rating: 0.09
ID Number(s):	WASTEWATER	PERMIT		WQ0010495136
	WASTEWATER	PERMIT		TPDES0069736
	WASTEWATER	PERMIT		WQ0010495152
	WASTEWATER	EPA ID		TX0069736
	STORMWATER	PERMIT		TXR05K243
Location:	approximately 1.6 miles east-northeast of the intersection of Farm-to-Market Road 1959 and Interstate Highway 45, adjacent to the southeast corner of Ellington Air Field in Harris County, Texas.			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	December 03, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 03, 2003 to December 03, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Steve Villatoro	Phone:	512-239-4930	

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
6. Rating Date: 9/1/2008 Repeat 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.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	12/29/2003	(311524)
2	01/21/2004	(311525)
3	02/23/2004	(311508)
4	03/22/2004	(311510)
5	04/20/2004	(311511)
6	06/22/2004	(311513)
7	06/22/2004	(311515)
8	07/22/2004	(358631)
9	09/07/2004	(358632)
10	09/21/2004	(358633)
11	10/22/2004	(358634)
12	11/19/2004	(358635)
13	12/23/2004	(385462)
14	01/09/2005	(345521)
15	01/31/2005	(385463)
16	02/22/2005	(385460)
17	03/21/2005	(385461)
18	04/26/2005	(423483)
19	05/20/2005	(423484)
20	06/22/2005	(395016)
21	06/23/2005	(423485)
22	07/20/2005	(444297)

23	09/01/2005	(444298)
24	09/20/2005	(444299)
25	10/20/2005	(474797)
26	11/28/2005	(474798)
27	12/22/2005	(474799)
28	01/24/2006	(474800)
29	02/21/2006	(474795)
30	03/23/2006	(474796)
31	04/20/2006	(502494)
32	05/25/2006	(502495)
33	06/22/2006	(502496)
34	07/20/2006	(524821)
35	09/05/2006	(524822)
36	09/21/2006	(549727)
37	10/20/2006	(524823)
38	11/17/2006	(549728)
39	12/14/2006	(549729)
40	01/18/2007	(549730)
41	02/19/2007	(549726)
42	03/19/2007	(583859)
43	04/17/2007	(583860)
44	05/17/2007	(583861)
45	06/18/2007	(583862)
46	07/19/2007	(583863)
47	08/20/2007	(604072)
48	09/18/2007	(604073)
49	10/18/2007	(604074)
50	11/15/2007	(622991)
51	12/17/2007	(622992)
52	12/19/2007	(599524)
53	01/17/2008	(622993)
54	02/18/2008	(674404)
55	03/17/2008	(674405)
56	04/17/2008	(674406)
57	05/15/2008	(692748)
58	06/18/2008	(692749)
59	07/18/2008	(692750)
60	11/17/2008	(707658)

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

Date: 12/31/2003 (311525)
Self 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: 05/31/2008 (692749)
Self 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

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 HOUSTON
RN101702405

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1871-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 City of Houston ("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 approximately 1.6 miles east-northeast of the intersection of Farm-to-Market Road 1959 and Interstate Highway 45, adjacent to the southeast corner of Ellington Air Field in Harris County, Texas (the "Facility").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 November 22, 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 Seven Thousand Eight Hundred Dollars (\$7,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand Five Hundred Sixty Dollars (\$1,560) 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. Six Thousand Two Hundred Forty Dollars (\$6,240) 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 on November 5, 2008, the City submitted an administratively complete permit application for authorization to discharge wastewater under a Texas Pollutant Discharge Elimination System ("TPDES") permit.
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 maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.125(2) and 305.65 and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on November 7, 2008. Specifically, the City did not renew TPDES Permit No. 10495136 and is continuing to discharge without authorization.

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 Houston, Docket No. 2008-1871-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 II Paragraph 6 above, Six Thousand Two Hundred Forty Dollars (\$6,240) of the assessed administrative penalty shall be offset with the condition that the City implements 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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 10495136;
 - b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. Written certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance and shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk St., Ste. H
Houston, Texas 77023-1425

4. 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.
5. 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.
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 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.
7. 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.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the 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.

City of Houston
DOCKET NO. 2008-1871-MWD-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Erdine
For the Executive Director

4/17/2009
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.

Michael S. Marcotte
Signature

3/4/09
Date

Michael S. Marcotte, P.E., D.WRE, BCEE
Name (Printed or typed)
Authorized Representative of
City of Houston

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: 2008-1871-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Houston

Payable Penalty Amount: Six Thousand Two Hundred Forty Dollars (\$6,240)

SEP Amount: Six Thousand Two Hundred Forty Dollars (\$6,240)

Type of SEP: Pre-approved

Third-Party Recipient: Armand Bayou Nature Center Coastal Tall Grass
Management-Prescribed Burn Program and Prairie
Restoration Project

Location of SEP: Harris 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 pay for the labor and materials costs associated with conducting prescribed burns, removing non-native trees, and for planting native trees and plants.

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 increasing ecosystem functionality. It will contribute to the overall prairie health by suppressing invasive brush species, increasing soil fertility, and promoting plant vigor.

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.

City of Houston
Agreed Order B Attachment A

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:

Armand Bayou Nature Center
Attn: Mark Kramer
PO Box 58828
Houston, Texas 77258

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 ATexas 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.

