

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0327-MWD-E **TCEQ ID:** RN102916178 **CASE NO.:** 37259

RESPONDENT NAME: Trinity @ Windfern LLC

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: Windfern MHP, located at 9401 Windfern Road approximately 300 feet south of Zaka Road and approximately 3 miles north of the intersection of Windfern Road and U.S. Highway 290, Harris County</p> <p>TYPE OF OPERATION: Mobile home park wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 June 8, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Don Clements, Owner/Member, Trinity @ Windfern LLC, 5909 Woodway Place Court, Houston, Texas 77057 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 5 and March 6, 2009</p> <p>Date of NOV/NOE Relating to this Case: February 26, 2009 (NOE)</p> <p>Background Facts: These were record reviews.</p> <p>WATER</p> <p>1) Failure to comply with the permitted effluent limitations for total suspended solids and ammonia nitrogen [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013509001, Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failure to pay fees and associated late fees for TCEQ Financial Account No. 23004005 [30 TEX. ADMIN. CODE § 21.4 and TEX. WATER CODE § 5.702].</p>	<p>Total Assessed: \$3,240</p> <p>Total Deferred: \$648 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,592</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest; and</p> <p>b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a and the effluent limits of TPDES Permit No. WQ0013509001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0013509001



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Mar-2009			
	PCW	11-Mar-2009	Screening	6-Mar-2009	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Trinity @ Windfern LLC				
Reg. Ent. Ref. No.	RN102916178				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	37259	No. of Violations	2		
Docket No.	2009-0327-MWD-E	Order Type	1660		
Media Program(s)	Water Quality	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Samuel Short		
		EC's Team	Enforcement Team 3		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	62.0% Enhancement	Subtotals 2, 3, & 7	\$1,240
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Notes: An enhancement is recommended for having seven NOV's for self-reported effluent data, one NOV for the same or similar violations, one NOV for non-similar violations, and one Agreed Order with denial within the last five years.

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	\$97	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,240
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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	\$3,240
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,240
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DEFERRAL	20.0% Reduction	Adjustment	-\$648
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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	\$2,592
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Screening Date 6-Mar-2009

Docket No. 2009-0327-MWD-E

PCW

Respondent Trinity @ Windfern LLC

Policy Revision 2 (September 2002)

Case ID No. 37259

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102916178

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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)	8	40%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 62%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

An enhancement is recommended for having seven NOVs for self-reported effluent data, one NOV for the same or similar violations, one NOV for non-similar violations, and one Agreed Order with denial within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 62%

Screening Date 6-Mar-2009	Docket No. 2009-0327-MWD-E	PCW
Respondent Trinity @ Windfern LLC	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37259	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN102916178		
Media [Statute] Water Quality		
Enf. Coordinator Samuel Short		
Violation Number <input type="text" value="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. WQ0013509001, 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 February 5, 2009 and shown in the attached table.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes
Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Two quarterly events are recommended.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes
The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Trinity @ Windfern LLC
Case ID No.: 37259
Reg. Ent. Reference No.: RN102916178
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				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	31-Dec-2007	11-Dec-2009	1.95	\$97	n/a	\$97

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater system. Date required is the first date of non-compliance. The final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$97

Screening Date 6-Mar-2009 Respondent Trinity @ Windfern LLC Case ID No. 37259 Reg. Ent. Reference No. RN102916178 Media [Statute] Water Quality Enf. Coordinator Samuel Short Violation Number <input type="text" value="2"/> Rule Cite(s) <input style="width:100%;" type="text" value="30 Tex. Admin. Code § 21.4 and Tex. Water Code § 5.702"/> Violation Description <input style="width:100%;" type="text" value="Failed to pay fees and associated late fees for TCEQ Financial Account No. 23004005."/>	Docket No. 2009-0327-MWD-E <div style="text-align: right;">PCW</div> <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>																					
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	single event	<input type="text"/>																				
No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.																						
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Economic Benefit Worksheet

Respondent Trinity @ Windfern LLC
Case ID No. 37259
Reg. Ent. Reference No. RN102918178
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

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

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0

Effluent Limit Violation Table

table rev.

Respondent	Trinity @ Windfern LLC	
ID Number(s)	TPDES Permit No. WQ0013509001	
Docket Number	2009-0327-MWD-E	
Ent. Coordinator	Samuel Short	
Corresponds to Violation Number:	1	

EFFLUENT PARAMETER

Permit Limit

	TSS Daily Average	TSS single grab max.	Ammonia Nitrogen single grab max.										
Month/Year	15 mg/L	60 mg/L	15 mg/L										
12/31/2007	17.3	c	17.6										
1/31/2008	25.3	62	c										
2/29/2008	16.3	c	c										
3/31/2008	17	c	c										

Name	Abbreviation
milligrams per liter	mg/L
total suspended solids maximum	TSS max.

1	03/22/2004	(319174)
2	04/22/2004	(319176)
3	05/27/2004	(362231)
4	06/23/2004	(362232)
5	07/28/2004	(362233)
6	08/25/2004	(362234)
7	09/22/2004	(362235)
8	10/29/2004	(387591)
9	11/29/2004	(387592)
10	12/07/2004	(339961)
11	12/30/2004	(387593)
12	01/26/2005	(387594)
13	03/02/2005	(387589)
14	03/28/2005	(387590)
15	04/27/2005	(425308)
16	05/09/2005	(379952)
17	06/01/2005	(425309)
18	06/21/2005	(425310)
19	07/21/2005	(425311)
20	08/26/2005	(445881)
21	09/28/2005	(445882)
22	10/26/2005	(477869)
23	11/23/2005	(477870)
24	12/29/2005	(477871)
25	01/26/2006	(477872)
26	04/10/2006	(504296)
27	04/10/2006	(504297)
28	07/05/2006	(466588)
29	07/17/2006	(486415)
30	07/24/2006	(488013)
31	01/22/2007	(626100)
32	01/22/2007	(626102)
33	01/22/2007	(626104)
34	01/22/2007	(626106)
35	01/22/2007	(626108)
36	01/22/2007	(626109)
37	01/22/2007	(626110)
38	03/28/2007	(626111)
39	03/28/2007	(626112)
40	03/28/2007	(626113)
41	05/21/2007	(555024)
42	08/03/2007	(626098)
43	08/03/2007	(626099)
44	08/03/2007	(626101)
45	08/03/2007	(626103)
46	09/18/2007	(626105)
47	09/18/2007	(626107)
48	01/28/2008	(675833)
49	01/28/2008	(675834)
50	02/21/2008	(675832)
51	02/21/2008	(675835)
52	02/21/2008	(675836)
53	02/21/2008	(675837)
54	02/21/2008	(675838)
55	06/06/2008	(694207)
56	06/06/2008	(694208)
57	07/22/2008	(694209)
58	07/22/2008	(694210)
59	07/22/2008	(694211)
60	12/17/2008	(731302)
61	01/20/2009	(731303)

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

Date: 03/31/2004 (319176) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/06/2004 (339961) CN601719776
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 317 317.4(g)(4)(B)
 Description: Failure to provide a back-up blower.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to check the plant on a daily basis as required by Other Requirement # 4.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to prevent an accumulation of sludge in the receiving ditch.
 Date: 07/27/2006 (485688) CN601719776
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to prevent sludge from the wastewater treatment plant from being discharged into the ditch at the outfall.
 Date: 09/30/2006 (626110) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 09/30/2007 (675835) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/31/2007 (675838) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2008 (675832) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 02/29/2008 (694207) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/31/2008 (694208) CN601719776
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter

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
TRINITY @ WINDFERN LLC
RN102916178

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0327-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 Trinity @ Windfern LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a mobile home park wastewater treatment facility located at 9401 Windfern Road approximately 300 feet south of Zaka Road and approximately three miles north of the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 3, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Two Hundred Forty Dollars (\$3,240) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Five Hundred Ninety-Two Dollars (\$2,592) of the administrative penalty and Six Hundred Forty-Eight Dollars (\$648) is deferred

contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. 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. WQ0013509001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on February 5, 2009 and as shown in the table below.

EFFLUENT PARAMETER			
<i>Permit Limit</i>			
	TSS Daily Average	TSS single grab max.	Ammonia Nitrogen single grab max.
<i>Month/Year</i>	15 mg/L	60 mg/L	15 mg/L
12/31/2007	17.3	c	17.6
1/31/2008	25.3	62	c
2/29/2008	16.3	c	c
3/31/2008	17	c	c

Name	Abbreviation
milligrams per liter	mg/L
total suspended solids maximum	TSS max.

2. Failed to pay fees and associated late fees for TCEQ Financial Account No. 23004005, in violation of 30 TEX. ADMIN. CODE § 21.4 and TEX. WATER CODE § 5.702, as documented during a record review conducted on March 6, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Trinity @ Windfern LLC, Docket No. 2009-0327-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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Re: Trinity @ Windfern LLC, TCEQ Financial Administration Account No. 23004005", to the address listed in Ordering Provision No. 1; and
 - b. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a and the effluent limits of TPDES Permit No. WQ0013509001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan

For the Executive Director

5/5/2009

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.

John S. Sullivan

Signature

4.6.09

Date

Don Clements

Name (Printed or typed)
Authorized Representative of
Trinity @ Windfern LLC

owner/member

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.

