

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2008-1725-MWD-E **TCEQ ID:** RN102074663 **CASE NO.:** 36751
RESPONDENT NAME: Town of Flower Mound

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: Town of Flower Mound WWTF, 1101 Duncan Lane, approximately two miles east and one mile south of the intersection of Farm-to-Market Road 2499 and Farm-to-Market Road 3040, Flower Mound, Denton 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 July 6, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Kenneth Parr, Director of Public Works, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028 The Honorable Jody A. Smith, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, Texas 75028 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:</p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><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: September 10, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 8, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permitted limits for total ammonia nitrogen, total suspended solids, and dissolved oxygen [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011321001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$19,100</p> <p>Total Deferred: \$3,820</p> <p><input checked="" type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$15,280</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification</p> <p><input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification</p> <p><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>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, within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011321001, 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 limitations.</p>

Additional ID No(s): WQ0011321001

Attachment A

Docket Number: 2008-1725-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Town of Flower Mound
Penalty Amount:	Fifteen Thousand Two Hundred Eighty Dollars (\$15,280)
SEP Offset Amount:	Fifteen Thousand Two Hundred Eighty Dollars (\$15,280)
Type of SEP:	Custom (with pre-approved concept)
Location of SEP:	Denton 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. Project

The Respondent shall perform an erosion control project in a creek to reduce siltation in a tributary of the Trinity River in Denton County. This project will consist of the installation of approximately 40 linear feet of slope protection to eliminate ongoing erosion of the creek bank adjacent to 1201 Savannah Court in Flower Mound, Texas. Slope stabilization will be addressed by the installation of R-Rap Walls (also referred to as a Bag Wall installation). The R-Rap wall installation will begin approximately 30 linear feet downstream from an existing sanitary creek crossing and then will extend for 20 linear feet downstream. The slope protection will include both sides of the creek for a total of 40 linear feet.

Prior to commencing work, the Respondent shall submit a scope of work to the SEP Coordinator for approval. The scope of work must include specific details regarding the project, including cost estimates. 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 or to perform projects that the Respondent has any other existing obligation to perform. All portions of the project will be performed in accordance with federal, state and local laws and regulations. The Respondent shall also comply with proper permitting requirements of any local, state, or federal regulatory agency.

The Respondent certifies that there it has no legal responsibility or 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 stabilizing the creek bank and preventing further erosion that would result in sedimentation and siltation in the waterway. The project will reduce erosion, pooling of stagnant water, and downstream sedimentation. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems. This project will benefit and protect the water quality of the

Timber Creek watershed located between the project site and the confluence of Timber Creek at the East Fork of the Trinity River.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may cost more than the SEP Offset Amount to complete this project.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall submit the scope of work for the project within 120 days after the effective date of this Agreed Order, and shall complete the project within 365 days of the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 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. The Respondent shall submit progress reports to TCEQ thereafter in 90-day increments.

B. Final Report

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

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. Photographs of the project during implementation of the project and after completion;
3. A map identifying the location of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
4. A statement of quantifiable environmental benefits; and
5. Any additional information that 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:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
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 Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
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 12, 2008

DATES	Assigned	13-Oct-2008			
	PCW	24-Oct-2008	Screening	24-Oct-2008	EPA Due 5-Dec-2008

RESPONDENT/FACILITY INFORMATION	
Respondent	Town of Flower Mound
Reg. Ent. Ref. No.	RN102074663
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36751	No. of Violations	1
Docket No.	2008-1725-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Cheryl Thompson
		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)	<i>Subtotal 1</i>	\$10,000
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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	91.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$9,100
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Notes: The Respondent self-reported 15 months of effluent violations, received two NOVs for same or similar violations and three NOVs for non-similar violations.

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

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$1,001
 Approx. Cost of Compliance: \$10,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$19,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$19,100
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$19,100
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$3,820
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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	\$15,280
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Screening Date 24-Oct-2008

Docket No. 2008-1725-MWD-E

PCW

Respondent Town of Flower Mound

Policy Revision 2 (September 2002)

Case ID No. 36751

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102074663

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

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)	17	85%
	Other written NOVs	3	6%
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%
<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) 91%

>> 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 15 months of effluent violations, received two NOVs for same or similar violations and three NOVs for non-similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 91%

Screening Date 24-Oct-2008	Docket No. 2008-1725-MWD-E	PCW
Respondent Town of Flower Mound	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 36751	<small>PCW Revision June 12, 2008</small>	
Reg. Ent. Reference No. RN102074663		
Media [Statute] Water Quality		
Enf. Coordinator Cheryl Thompson		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011321001, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a).	
Violation Description	Failed to comply with permitted limits, as documented during a record review conducted on September 10, 2008. See attached table.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="25%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids and dissolved oxygen values were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Four 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="checkbox"/>	(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 <input type="text" value="\$1,001"/>	Violation Final Penalty Total <input type="text" value="\$19,100"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$19,100"/>	

Economic Benefit Worksheet

Respondent Town of Flower Mound
Case ID No. 36751
Reg. Ent. Reference No. RN102074663
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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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)	\$10,000	31-Aug-2007	31-Aug-2009	2.00	\$1,001	n/a	\$1,001

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

\$10,000

TOTAL

\$1,001

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600639835	Town of Flower Mound	Classification: AVERAGE	Rating: 2.77
Regulated Entity:	RN102074663	TOWN OF FLOWER MOUND WWTF	Classification: AVERAGE	Site Rating: 0.87
ID Number(s):	WASTEWATER	PERMIT	WQ0011321001	
	WASTEWATER	PERMIT	TPDES0020711	
	WASTEWATER	PERMIT	TX0020711	
	WASTEWATER LICENSING	LICENSE	WQ0011321001	
	STORMWATER	PERMIT	TXR05Q427	
	STORMWATER	PERMIT	TXR15ML14	
Location:	1101 Duncan Lane approximately two miles east and one mile south of the intersection of Farm-to-Market Road 2499 and Farm-to-Market Road 3040, in the Town of Flower Mound, in Denton County, Texas			Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	October 30, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 30, 2003 to October 30, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Nam	Cheryl Thompson		Phone:	(817) 588-5886

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	11/18/2003	(297460)
2	11/21/2003	(297452)
3	11/21/2003	(297459)
4	11/24/2003	(297462)
5	12/19/2003	(297461)
6	02/03/2004	(297442)
7	03/22/2004	(297445)
8	05/25/2004	(297448)
9	06/25/2004	(297450)
10	07/01/2004	(332805)
11	07/07/2004	(297446)
12	07/25/2004	(297453)
13	08/16/2004	(352977)
14	09/23/2004	(352978)
15	09/23/2004	(352979)
16	09/23/2004	(352981)
17	11/23/2004	(352980)
18	12/07/2004	(339847)
19	12/16/2004	(382281)
20	02/25/2005	(382279)
21	03/18/2005	(247733)
22	03/28/2005	(382280)
23	04/05/2005	(375723)
24	04/26/2005	(430119)
25	05/20/2005	(430120)
26	06/16/2005	(396078)
27	06/28/2005	(430121)
28	07/25/2005	(430122)
29	08/23/2005	(441243)
30	09/23/2005	(441244)
31	10/27/2005	(441245)

32	11/28/2005	(469147)
33	11/28/2005	(469149)
34	12/30/2005	(469148)
35	02/27/2006	(469146)
36	03/24/2006	(498670)
37	05/08/2006	(498671)
38	06/09/2006	(498672)
39	06/27/2006	(498673)
40	08/02/2006	(520666)
41	08/18/2006	(520667)
42	09/26/2006	(545063)
43	11/15/2006	(517097)
44	12/12/2006	(545065)
45	12/18/2006	(533310)
46	12/29/2006	(553673)
47	01/03/2007	(576320)
48	01/23/2007	(545066)
49	01/24/2007	(545064)
50	02/09/2007	(539901)
51	02/20/2007	(576314)
52	03/20/2007	(576315)
53	03/27/2007	(555181)
54	04/11/2007	(576316)
55	04/11/2007	(576319)
56	05/18/2007	(576317)
57	06/25/2007	(576318)
58	08/20/2007	(601907)
59	10/08/2007	(619889)
60	10/18/2007	(619892)
61	10/24/2007	(619890)
62	11/26/2007	(619891)
63	01/15/2008	(672366)
64	03/05/2008	(672365)
65	05/06/2008	(690287)
66	05/12/2008	(690285)
67	06/11/2008	(690286)
68	10/09/2008	(702612)

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

Date: 12/31/2003 (297462)

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: 04/30/2004 (297448)

Self YES Classification: Moderate

Report?

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: 05/31/2004

(297450)

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: 07/01/2004

(332805)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 12/07/2004

(339847)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)

30 TAC Chapter 305, SubChapter F 305.125(11)(C)

Description: Failure to submit a copy of the annual sludge report to the region office.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)

30 TAC Chapter 305, SubChapter F 305.125(5)

TWC Chapter 26 26.121

TWC Chapter 26 26.121(a)

TWC Chapter 26 26.121(a)(1)

TWC Chapter 26 26.121(a)(2)

TWC Chapter 26 26.121(a)(3)

TWC Chapter 26 26.121(b)

TWC Chapter 26 26.121(c)

TWC Chapter 26 26.121(d)

TWC Chapter 26 26.121(e)

Description: Failure to prevent the discharge of wastewater at the plant and in the collection system.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to comply with the permitted effluent limits.
Date: 06/30/2005 (430122)

Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 12/31/2005 (469149)

Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 02/28/2006 (498670)

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: 08/31/2006 (545063)

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: 10/31/2006 (545065)

Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 11/15/2006 (517097)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)
30 TAC Chapter 305, SubChapter F 305.125(5)
TWC Chapter 26 26.121
TWC Chapter 26 26.121(a)
TWC Chapter 26 26.121(a)(1)
TWC Chapter 26 26.121(a)(2)
TWC Chapter 26 26.121(a)(3)
TWC Chapter 26 26.121(b)
TWC Chapter 26 26.121(c)
TWC Chapter 26 26.121(d)
TWC Chapter 26 26.121(e)

Description: Failure to prevent the unauthorized discharge of wastewater from the collection system.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to comply with effluent permit limits for NH3N and TSS.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)
Description: Failure to comply with analytical methodologies and procedures.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to submit the noncompliance notification for one TSS permit violation.
Date: 12/15/2006 (533310)

Self Report? NO Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.176(a)
Description: Failure to monitor or control the discharge from Significant and Non Significant Industrial Users to the POTW.

Self Report? NO Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.176(a)
Description: Failure to identify and require two Categorical Industrial Users to comply with the pretreatment reporting requirements.
Date: 12/29/2006 (553673)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE
Date: 06/30/2007 (576319)

Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 08/31/2007 (619889)

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: 11/30/2007 (672366)

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: 02/28/2008

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

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: 4/30/2008

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: 05/31/2008

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.

G. Type of environmental management systems (EMSs).

H. Voluntary on-site compliance assessment dates.

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TOWN OF FLOWER MOUND
RN102074663

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1725-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 Town of Flower Mound ("the Town") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Town appear before the Commission and together stipulate that:

1. The Town owns and operates a wastewater treatment facility located at 1101 Duncan Lane, approximately two miles east and one mile south of the intersection of Farm-to-Market Road 2499 and Farm-to-Market Road 3040 in Flower Mound, Denton County, Texas (the "Facility").
2. The Town 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 Town agree that the Commission has jurisdiction to enter this Agreed Order, and that the Town is subject to the Commission's jurisdiction.
4. The Town received notice of the violations alleged in Section II ("Allegations") on or about October 13, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Town of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nineteen Thousand One Hundred Dollars (\$19,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

Three Thousand Eight Hundred Twenty Dollars (\$3,820) is deferred contingent upon the Town'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 Town fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Town to pay all or part of the deferred penalty. Fifteen Thousand Two Hundred Eighty Dollars (\$15,280) shall be conditionally offset by the Town's completion of a Supplemental Environmental Project.

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 Town 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 Town 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 Town is alleged to have failed to comply with permitted limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011321001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on September 10, 2008, and as depicted in the table below:

	Total Ammonia Nitrogen Daily Average	Total Ammonia Nitrogen Daily Average	Total Ammonia Nitrogen Daily Maximum	Total Suspended Solids Daily Maximum	Dissolved Oxygen
<i>Month/Year</i>	2 mg/L	167 lbs/day	10 mg/L	40 mg/L	Monthly Minimum 6.0
Aug-07	c	c	c	42.6	5.8
Nov-07	c	c	c	76.8	c
Feb-08	2.74	c	14.5	c	c
Mar-08	4.1	194	c	c	c
Apr-08	3.3	c	c	c	c
May-08	2.7	c	c	c	c

milligrams per liter = mg/L compliant (no excursions) = c
pounds per day = lbs/day

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Town pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Town'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: Town of Flower Mound, Docket No. 2008-1725-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 Town shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I Paragraph 6 above, Fifteen Thousand Two Hundred Eighty Dollars (\$15,280) of the assessed administrative penalty shall be offset with the condition that the Town implement the SEP defined in Attachment A, incorporated herein by reference. The Town'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 Town shall, within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011321001, 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 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 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Town. The Town 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 Town 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 Town's failure to comply is not a violation of this Agreed Order. The Town shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Town shall notify the Executive Director within seven days after the Town 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 Town shall be made in writing to the Executive Director. Extensions are not effective until the Town 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 Town 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 Town, or three days after the date on which the Commission mails notice of the Order to the Town, 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

[Signature]
For the Executive Director

6/23/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

May 5, 2009
Date

Jody A. Smith
Name (Printed or typed)
Authorized Representative of
Town of Flower Mound

Mayor
Title
Town of Flower Mound

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: 2008-1725-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Town of Flower Mound
Penalty Amount:	Fifteen Thousand Two Hundred Eighty Dollars (\$15,280)
SEP Offset Amount:	Fifteen Thousand Two Hundred Eighty Dollars (\$15,280)
Type of SEP:	Custom (with pre-approved concept)
Location of SEP:	Denton 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. Project

The Respondent shall perform an erosion control project in a creek to reduce siltation in a tributary of the Trinity River in Denton County. This project will consist of the installation of approximately 40 linear feet of slope protection to eliminate ongoing erosion of the creek bank adjacent to 1201 Savannah Court in Flower Mound, Texas. Slope stabilization will be addressed by the installation of R-Rap Walls (also referred to as a Bag Wall installation). The R-Rap wall installation will begin approximately 30 linear feet downstream from an existing sanitary creek crossing and then will extend for 20 linear feet downstream. The slope protection will include both sides of the creek for a total of 40 linear feet.

Prior to commencing work, the Respondent shall submit a scope of work to the SEP Coordinator for approval. The scope of work must include specific details regarding the project, including cost estimates. 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 or to perform projects that the Respondent has any other existing obligation to perform. All portions of the project will be performed in accordance with federal, state and local laws and regulations. The Respondent shall also comply with proper permitting requirements of any local, state, or federal regulatory agency.

The Respondent certifies that there it has no legal responsibility or 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 stabilizing the creek bank and preventing further erosion that would result in sedimentation and siltation in the waterway. The project will reduce erosion, pooling of stagnant water, and downstream sedimentation. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems. This project will benefit and protect the water quality of the

Timber Creek watershed located between the project site and the confluence of Timber Creek at the East Fork of the Trinity River.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may cost more than the SEP Offset Amount to complete this project.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the project. The Respondent shall submit the scope of work for the project within 120 days after the effective date of this Agreed Order, and shall complete the project within 365 days of the effective date of this Agreed Order.

3. Reporting

A. Progress Reports

Within 90 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. The Respondent shall submit progress reports to TCEQ thereafter in 90-day increments.

B. Final Report

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

1. An itemized list of expenditures and total of costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. Photographs of the project during implementation of the project and after completion;
3. A map identifying the location of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
4. A statement of quantifiable environmental benefits; and
5. Any additional information that 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:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
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 Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

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

