

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-0434-MWD-E **TCEQ ID:** RN102075744 **CASE NO.:** 37412
RESPONDENT NAME: Texas Department of Transportation

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: Palo Pinto County Rest Area, located on the northwest side of Interstate Highway 20 at a point approximately 0.25 mile west of the Parker County line, Palo Pinto 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 August 3, 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. Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Toribio Garza, Maintenance Division Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701 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: December 1, 2008</p> <p>Date of NOV/NOE Relating to this Case: March 20, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the permitted effluent limitations for residual chlorine and total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011311001, Interim Effluent Limitations and Monitoring Requirements Nos. 1 and 2].</p>	<p>Total Assessed: \$8,010</p> <p>Total Deferred: \$1,602 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$6,408</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a) During July 2008, converted from gas chlorination to tablet chlorination;</p> <p>b) On July 17, 2008, completed the pumping of sludge from the Facility and fixed the clarifier rakes;</p> <p>c) During March 2009, installed an air pop-off valve to regulate air input and protect the motors; and</p> <p>d) During March 2009, returned to compliance with the permitted effluent limits of TPDES Permit No. WQ0011311001.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (see SEP Attachment A).</p>

Additional ID No(s): WQ0011311001

Attachment A

Docket Number: 2009-0434-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Texas Department of Transportation
Payable Penalty Amount: Six Thousand Four Hundred Eight Dollars (\$6,408)
SEP Amount: Six Thousand Four Hundred Eight Dollars (\$6,408)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance
Location of SEP: Palo Pinto 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 provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

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:

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

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	23-Mar-2009	Screening	2-Apr-2009	EPA Due	
	PCW	2-Apr-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Texas Department of Transportation		
Reg. Ent. Ref. No.	RN102075744		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37412	No. of Violations	1
Docket No.	2009-0434-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
		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 \$3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 192.0% Enhancement Subtotals 2, 3, & 7 \$5,760

Notes: Enhancement due to 33 monthly self-reported effluent violations, one NOV with same or similar violations, one NOV with unrelated violations, and one final enforcement order containing a denial of liability.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$300

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$255
 Approx. Cost of Compliance \$3,130
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$8,460

OTHER FACTORS AS JUSTICE MAY REQUIRE -5.3% Adjustment -\$450

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction so that monthly self-reported effluent violations do not overly-impact the penalty amount.

Final Penalty Amount \$8,010

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$8,010

DEFERRAL 20.0% Reduction Adjustment -\$1,602

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 \$6,408

Screening Date 2-Apr-2009

Docket No. 2009-0434-MWD-E

PCW

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002)

Case ID No. 37412

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102075744

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

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)	34	170%
	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%
<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) 192%

>> **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

Enhancement due to 33 monthly self-reported effluent violations, one NOV with same or similar violations, one NOV with unrelated violations, and one final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 192%

Screening Date 2-Apr-2009 **Docket No.** 2009-0434-MWD-E **PCW**

Respondent Texas Department of Transportation *Policy Revision 2 (September 2002)*

Case ID No. 37412 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102075744

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011311001, Interim Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description Failed to comply with the permitted effluent limitations, as documented during a record review conducted on December 1, 2008, and shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

OR

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes Total suspended solids and total residual chlorine were evaluated to determine whether the discharged amounts of pollutants exceeded levels protective of human health and the environment. 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 3 **Number of violation days** 244

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended.

Good Faith Efforts to Comply 10.0% Reduction \$300

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

Notes The Respondent achieved compliance by March 31, 2009.

Violation Subtotal \$2,700

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

Estimated EB Amount \$255 **Violation Final Penalty Total** \$8,010

This violation Final Assessed Penalty (adjusted for limits) \$8,010

Economic Benefit Worksheet

Respondent Texas Department of Transportation
Case ID No. 37412
Reg. Ent. Reference No. RN102075744
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
Delayed Costs							
Equipment	\$130	31-Jan-2008	31-Mar-2009	1.16	\$1	\$10	\$11
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$3,000	31-Jan-2008	31-Mar-2009	1.16	\$12	\$233	\$245
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
 Estimated cost to pump sludge from plant to fix clarifier rakes, install an air pop-off valve, and convert from gas chlorination to tablet chlorination. Date required is the initial month of non-compliance. Final date is the date of compliance.

Item Description	Yrs	Interest Saved	Onetime Costs	EB Amount
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 **\$3,130** **TOTAL** **\$255**

EFFLUENT VIOLATION TABLE

Texas Department of Transportation

TPDES Permit No. WQ0011311001

Docket No. 2009-0434-MWD-E

	Total Residual Chlorine Min.	Total Residual Chlorine Max.	TSS Daily Avg. Conc.
Months	Limit = 1.0 mg/L	Limit = 4.0 mg/L	Limit = 20 mg/L
1/31/2008	c	7.9	26
2/29/2008	c	7.5	c
3/31/2008	c	6.8	c
4/30/2008	c	c	23
5/31/2008	0.9	c	25
6/30/2008	0.8	c	27
7/31/2008	0.9	c	c
8/31/2008	c	c	26

TSS = total suspended solids

avg. = average

conc. = concentration

mg/L = milligrams per liter

min. = minimum

max. = maximum

c = compliant

Compliance History Report

Customer/Respondent/Owner-Operator: CN600803456 Texas Department of Transportation Classification: AVERAGE Rating: 3.15
 Regulated Entity: RN102075744 PALO PINTO COUNTY REST AREA Classification: AVERAGE Site Rating: 3.15
 ID Number(s): WASTEWATER PERMIT WQ0011311001
 WASTEWATER PERMIT TPDES0027855
 WASTEWATER PERMIT TX0027855
 WASTEWATER LICENSING LICENSE WQ0011311001
 Location: ON THE NW SIDE OF I-20 AT A POINT
 APPRX 0.25 M W OF THE PARKER CO LINE
 IN PALO PINTO CO, TX
 TCEQ Region: REGION 04 - DFW METROPLEX
 Date Compliance History Prepared: March 23, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: March 23, 2004 to March 23, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Jennifer Graves Phone: 956-430-6023

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.

Effective Date: 12/20/2007 ADMINORDER 2005-0750-MWD-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Moderate

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

Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

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	07/09/2004	(303117)		4	07/09/2004	(303126)
2	07/09/2004	(303118)		5	08/31/2004	(271610)
3	07/09/2004	(303125)		6	12/15/2004	(383591)

7	12/15/2004	(383592)	39	02/27/2007	(579310)
8	12/15/2004	(383593)	40	02/27/2007	(579314)
9	12/15/2004	(383594)	41	02/27/2007	(579315)
10	12/15/2004	(383595)	42	06/12/2007	(579311)
11	12/15/2004	(383596)	43	08/02/2007	(579312)
12	12/15/2004	(383597)	44	08/02/2007	(579313)
13	12/15/2004	(383598)	45	08/10/2007	(568424)
14	12/31/2004	(383599)	46	08/28/2007	(602758)
15	01/07/2005	(342654)	47	10/22/2007	(621079)
16	03/02/2005	(383590)	48	12/05/2007	(621080)
17	03/10/2005	(373084)	49	12/13/2007	(600798)
18	03/17/2005	(350462)	50	01/07/2008	(673189)
19	03/23/2005	(442408)	51	01/24/2008	(673190)
20	05/12/2005	(442409)	52	02/27/2008	(712249)
21	05/16/2005	(442410)	53	03/11/2008	(691340)
22	06/17/2005	(442411)	54	03/25/2008	(640005)
23	07/22/2005	(442412)	55	04/23/2008	(691341)
24	09/01/2005	(442413)	56	05/19/2008	(691342)
25	10/11/2005	(471481)	57	05/22/2008	(640453)
26	11/04/2005	(471482)	58	07/07/2008	(712252)
27	12/07/2005	(471483)	59	07/18/2008	(712253)
28	12/29/2005	(471484)	60	08/27/2008	(712255)
29	02/15/2006	(471485)	61	09/02/2008	(712250)
30	03/07/2006	(471480)	62	09/02/2008	(712251)
31	05/08/2006	(500143)	63	09/02/2008	(712254)
32	06/08/2006	(500144)	64	09/15/2008	(712256)
33	07/06/2006	(500145)	65	10/20/2008	(712257)
34	09/25/2006	(522257)	66	11/21/2008	(728570)
35	09/25/2006	(522258)	67	12/08/2008	(728571)
36	11/08/2006	(546940)	68	01/14/2009	(728572)
37	11/08/2006	(546941)	69	03/20/2009	(709608)
38	12/01/2006	(546942)			

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

Date: 03/31/2004 (383591) CN600803456
 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: 04/30/2004 (383592) CN600803456
 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: 05/31/2004 (383593) CN600803456
 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: 06/30/2004 (383594) CN600803456
 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: 01/31/2007 (579310) CN600803456
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: 02/28/2007 (579311) CN600803456
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: 03/31/2007 (579312) CN600803456
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: 04/30/2007 (712250) CN600803456
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: 05/31/2007 (712251) CN600803456
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: 06/30/2007 (579313) CN600803456
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: 07/31/2007 (602758) CN600803456
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: 08/09/2007 (568424) CN600803456
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Description: Failure to maintain an adequate amount and quality of mixed liquor in the aeration basin.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Description: Failure to comply with the permitted pH minimum limit of 6.0 S.U.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 319, SubChapter A 319.7(c)
WQ11311-001 PERMIT
Description: Failure to comply with the effluent permit limits.

Date: 07/31/2004 (383595) CN600803456
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: 08/31/2004 (383596) CN600803456
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: 09/30/2004 (383597) CN600803456
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: 01/07/2005 (342654) CN600803456
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to submit noncompliance reports for effluent violations* that deviate by more than 40% from the permit limit.

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 the annual sludge report .

Date: 06/30/2005 (442412) CN600803456
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: 06/30/2006 (522257) CN600803456
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: 07/31/2006 (522258) CN600803456
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: 11/30/2006 (579314) CN600803456
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: 12/31/2006 (579315) CN600803456
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

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
WQ11311-001 PERMIT
Description: Failure to submit noncompliance reports for effluent violations that exceeded or deviated from the permit limits by more than 40%.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 317 317.6(b)(1)(E)
Description: Failure to include an alarm or vents in the room housing the gas chlorine cylinders.

Date: 08/31/2007 (712255) CN600803456
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 (621079) CN600803456
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: 10/31/2007 (621080) CN600803456
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 (673190) CN600803456
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 (712249) CN600803456
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 (691340) CN600803456
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 (691341) CN600803456
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: 04/30/2008 (691342) CN600803456
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 (712252) CN600803456
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: 06/30/2008 (712253) CN600803456
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: 07/31/2008 (712254) CN600803456
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: 08/31/2008 (712256) CN600803456
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: 11/30/2008 (728571) CN600803456
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: 12/31/2008 (728572) CN600803456
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
TEXAS DEPARTMENT OF
TRANSPORTATION
RN102075744

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0434-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 Texas Department of Transportation ("the Respondent") under the authority of TEX. WATER CODE chs. 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 wastewater treatment facility located on the northwest side of Interstate Highway 20 at a point approximately 0.25 mile west of the Parker County line in Palo Pinto 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 25, 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 Eight Thousand Ten Dollars (\$8,010) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Six

Thousand Four Hundred Eight Dollars (\$6,408) of the administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP") and One Thousand Six Hundred Two Dollars (\$1,602) is deferred contingent upon the Respondent's timely and satisfactorily 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. During July 2008, converted from gas chlorination to tablet chlorination;
 - b. On July 17, 2008, completed the pumping of sludge from the Facility and fixed the clarifier rakes;
 - c. During March 2009, installed an air pop-off valve to regulate air input and protect the motors; and
 - d. During March 2009, returned to compliance with the permitted effluent limits of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011311001.
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 Respondent 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 Respondent is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011311001, Interim Effluent Limitations and Monitoring Requirements Nos. 1 and 2, as documented during a record review conducted on December 1, 2008, and shown in the following table:

EFFLUENT VIOLATION TABLE			
	Total Residual Chlorine Min.	Total Residual Chlorine Max.	TSS Daily Avg. Conc.
Months	Limit = 1.0 mg/L	Limit = 4.0 mg/L	Limit = 20 mg/L
1/31/2008	c	7.9	26
2/29/2008	c	7.5	c
3/31/2008	c	6.8	c
4/30/2008	c	c	23
5/31/2008	0.9	c	25
6/30/2008	0.8	c	27
7/31/2008	0.9	c	c
8/31/2008	c	c	26
TSS = total suspended solids		min. = minimum	
avg. = average		max. = maximum	
conc. = concentration		c = compliant	
mg/L = milligrams per liter			

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: Texas Department of Transportation, Docket No. 2009-0434-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Six Thousand Four Hundred Eight Dollars (\$6,408) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The

- Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the 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 Erdler
For the Executive Director

8/6/2009
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.

Toribio Garza, Jr.
Signature

6/1/09
Date

Toribio Garza, Jr.
Name (Printed or typed)
Authorized Representative of
Texas Department of Transportation

Maintenance Division 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: 2009-0434-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Texas Department of Transportation
Payable Penalty Amount: Six Thousand Four Hundred Eight Dollars (\$6,408)
SEP Amount: Six Thousand Four Hundred Eight Dollars (\$6,408)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance
Location of SEP: Palo Pinto 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 provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

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:

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

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

