

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1062-PWS-E **TCEQ ID:** RN101204832 **CASE NO.:** 37921  
**RESPONDENT NAME:** Texas Department of Transportation

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> TXDOT Nolan County SRA, located 2.8 miles west of Trent on Interstate 20, Nolan County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 23, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> Mr. Tel Croston, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5717; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. David Ham, Water and Wastewater Manager, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701  Mr. Toribio Garza, Jr., Maintenance Division Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 28, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to collect routine distribution coliform samples, and failure to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</p>	<p><b>Total Assessed:</b> \$10,465</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$10,465</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting; and</p> <p>b. Within 180 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a.</p>

Additional ID No(s): 1770005

**Attachment A**  
**Docket Number: 2009-1062-PWS-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Texas Department of Transportation</b>
<b>Payable Penalty Amount:</b>	<b>Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465)</b>
<b>SEP Amount:</b>	<b>Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Water or Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Nolan County</b>

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 each 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

<b>DATES</b>	Assigned	29-Jun-2009	Screening	9-Jul-2009	EPA Due	20-Mar-2010
	PCW	10-Jul-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Texas Department of Transportation		
Reg. Ent. Ref. No.	RN101204832		
Facility/Site Region	3-Abilene	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37921	No. of Violations	1
Docket No.	2009-1062-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Tel Croston
		EC's Team	Enforcement Team 2
Admin. Penalty \$	Limit Minimum \$50	Maximum	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes:

**Culpability**   Enhancement **Subtotal 4**

Notes:

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts	\$431
Approx. Cost of Compliance	\$390

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes:

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

**PAYABLE PENALTY**

**Screening Date** 9-Jul-2009

**Docket No.** 2009-1062-PWS-E

**PCW**

**Respondent** Texas Department of Transportation

Policy Revision 2 (September 2002)

**Case ID No.** 37921

PCW Revision October 30, 2009

**Reg. Ent. Reference No.** RN101204832

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Tel Croston

### 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 <i>(number of NOVs meeting criteria)</i>	11	55%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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)** 61%

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

N/A

**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 is due to 13 written Notices of Violations ("NOV") for the same or similar violations and one NOV with dissimilar violations as those in the current enforcement action.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 61%

<b>Screening Date</b> 9-Jul-2009	<b>Docket No.</b> 2009-1062-PWS-E	<b>PCW</b>		
<b>Respondent</b> Texas Department of Transportation	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 37921	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN101204832				
<b>Media [Statute]</b> Public Water Supply				
<b>Enf. Coordinator</b> Tel Croston				
<b>Violation Number</b> <input type="text" value="1"/>				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(I) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)			
<b>Violation Description</b>	Failed to collect routine distribution coliform samples during the months of June 2007 through January 2008 and from March through July 2008, and failed to provide public notification of the failure to sample for the months of June 2007 through January 2008 and from March through July 2008.			
<b>Base Penalty</b>		<input type="text" value="\$1,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	x	<input type="text"/>	<input type="text"/>	
<b>Percent</b>		<input type="text" value="50%"/>		
<b>&gt;&gt; Programmatic Matrix</b>				
Falsification				
Major			Moderate	Minor
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Percent</b>		<input type="text" value="0%"/>		
<b>Matrix Notes</b>	Failure to collect routine monitoring samples may allow a significant amount of undetected contaminants that exceed levels protective of human health to be distributed to the public resulting in illness.			
<b>Adjustment</b>		<input type="text" value="\$500"/>		
		<input type="text" value="\$500"/>		
<b>Violation Events</b>				
<b>Number of Violation Events</b> <input type="text" value="13"/>		<input type="text" value="426"/> <b>Number of violation days</b>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	x		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
single event	<input type="text"/>			
<b>Violation Base Penalty</b>		<input type="text" value="\$6,500"/>		
Thirteen monthly events are recommended based on the months for which routine distribution coliform samples were not taken.				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> <b>Reduction</b>		
		<input type="text" value="\$0"/>		
		<input type="text" value="\$0"/>		
		<input type="text" value="\$0"/>		
		<input type="text" value="\$0"/>		
<b>Notes</b>		The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>		<input type="text" value="\$6,500"/>		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$431"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$10,465"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$10,465"/>		

## Economic Benefit Worksheet

**Respondent** Texas Department of Transportation  
**Case ID No.** 37921  
**Reg. Ent. Reference No.** RN101204832  
**Media** Public Water Supply  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**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]	\$390	1-Jun-2007	30-Jul-2008	2.08	\$41	\$390	\$431
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of routine sampling (\$25 per sample) and to provide public notice (\$5 per notice). Date required is the first month of the violation. Final date is the last month of the violation.

Approx. Cost of Compliance

\$390

**TOTAL**

\$431

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600803456 Texas Department of Transportation Classification: AVERAGE Rating: 3.15  
Regulated Entity: RN101204832 TXDOT NOLAN COUNTY SRA Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1770005  
Location: 2.8 MILES WEST OF TRENT ON INTERSTATE HIGHWAY-  
20, NOLAN COUNTY TEXAS  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: July 08, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 08, 2004 to July 08, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Tel Croston Phone: 239 - 5717

## 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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

## 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	04/10/2009	(736140)
2	06/11/2009	(748743)
3	06/18/2009	(749644)
4	06/18/2009	(749646)
5	06/18/2009	(749650)
6	06/18/2009	(749653)
7	06/18/2009	(749654)
8	06/18/2009	(749657)
9	06/18/2009	(749658)
10	06/18/2009	(749660)
11	06/18/2009	(749665)
12	06/18/2009	(749669)
13	06/18/2009	(749671)
14	06/18/2009	(749673)
15	06/23/2009	(759361)

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

Date: 07/30/2007 (748743)

CN600803456

	Self	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 06/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 06/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	09/10/2007	(749644)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 07/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 07/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	11/01/2007	(749646)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 08/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 08/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	12/20/2007	(749650)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 09/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 09/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	01/31/2008	(749653)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 10/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 10/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	02/14/2008	(749654)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 11/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			
Description:	TCR PN Routine Monitoring Violation 11/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).			
Date:	02/21/2008	(749657)	CN600803456	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)			
Description:	TCR Routine Monitoring Violation 12/2007 - Failure to collect any routine monitoring sample(s).			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)			

Description: TCR PN Routine Monitoring Violation 12/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 03/11/2008 (749658) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 01/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 01/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 04/29/2008 (749660) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 03/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 03/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 05/22/2008 (749665) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 04/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 04/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 06/27/2008 (749669) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 05/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 05/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 07/31/2008 (749671) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 09/03/2008 (749673) CN600803456  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
 Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
 Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 04/10/2009 (736140) CN600803456  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(I)(III)

Description: Failure to maintain a log of the amount of chemicals used each week.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)  
Description: Failure to provide a copy of the purchase water contract.

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  
RN101204832**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1062-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas Department of Transportation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **I. FINDINGS OF FACT**

1. The Respondent owns and operates a public water supply located 2.8 miles west of Trent on Interstate 20, Nolan County, Texas (the "Facility") that has approximately two service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review on June 23, 2009, TCEQ staff documented that the Respondent did not collect routine distribution coliform samples during the months of June 2007 through January 2008 and from March through July 2008, and did not provide public notification of the failure to sample for the months of June 2007 through January 2008 and from March through July 2008.
3. The Respondent received notice of the violations on June 28, 2009.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution coliform samples, and failed to provide public notification of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

## III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that 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. 2009-1062-PWS-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 II, Paragraph 4 above, Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465) of the assessed administrative penalty shall be offset with the condition that the Respondent implement 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 Respondent shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109.  
  
This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
  - b. Within 180 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

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

with a copy to:

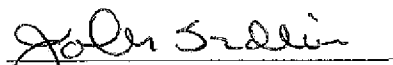
Public Drinking Water Section, Manager  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. 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.
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. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

10/23/2005  
Date

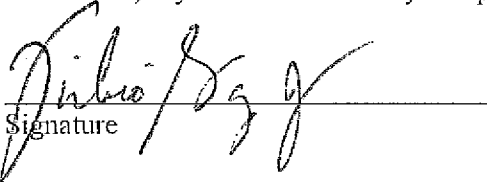
I, the undersigned, have read and understand the attached Agreed Order in the matter of Texas Department of Transportation. I am authorized to agree to the attached Agreed Order on behalf of Texas Department of Transportation, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Texas Department of Transportation waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

9/22/09  
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 III, Paragraph 1 of this Agreed Order.



Attachment A  
Docket Number: 2009-1062-PWS-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Texas Department of Transportation

**Payable Penalty Amount:** Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465)

**SEP Amount:** Ten Thousand Four Hundred Sixty-Five Dollars (\$10,465)

**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:** Nolan 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 each 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.

