

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2005-1335-MWD-E TCEQ ID: RN102096526 CASE NO.: 26305

RESPONDENT NAME: WESTERN TRAILS WATER SUPPLY CORPORATION

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

SITE WHERE VIOLATION(S) OCCURRED: Approximately 0.5 miles north of U.S. Highway 181 and approximately 3.5 miles northwest of the intersection of U.S. Highway 181 and Farm-to-Market Road 1518, Bexar County

TYPE OF OPERATION: Wastewater treatment facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired April 28, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Ms. Merrilee Gerberding Hupp, Waste Enforcement Section, MC 169, (512) 239-4490
TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050
Respondent: Mr. Larry V. Ricketts, Member, Western Trails Water Supply Corporation, 12290 Highway 181, Suite 62, San Antonio, Texas 78223
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 11, 2005</p> <p>Date of NOE Relating to this Case: July 1, 2005</p> <p>Background Facts: The case was referred to the Litigation Division on October 31, 2005. The EDPRP was filed December 19, 2005. The Respondent filed an answer and the case was referred to SOAH. An evidentiary hearing was scheduled for June 26, 2007. On June 19, 2007, the Respondent filed a Motion for Continuance requesting a Financial Ability to Pay analysis, which was granted by the ALJ. The financial analysis was completed on January 22, 2008, and an Agreed Order was set for the September 10, 2008, Commission Agenda. At the September 10, 2008, Commission Agenda meeting the Commission remanded the matter to the ED and directed ED staff to work with the Respondent to ensure that the technical requirements contained in the order could be completed by the specified deadlines. The Litigation Division, the Enforcement Division, SBLGA, and the FMT Assistance program, in collaboration with the Respondent, developed an additional, alternative technical requirement allowing the Respondent to obtain authorization to operate as an On Site Sewage Facility ("OSSF") through the Bexar County Environmental Services Division in lieu of obtaining a TPDES permit from the TCEQ.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MWD:</p> <ol style="list-style-type: none"> Failed to submit a permit application for the continued operation of the wastewater treatment facility after the permit expired [30 TEX. ADMIN. CODE § 305.42(a) and TEX. WATER CODE § 26.12(a)]. Failed to employ a wastewater treatment plant operator holding a Class D license or higher [30 TEX. ADMIN. CODE § 30.350(j)]. 	<p>Total Assessed: \$25,500</p> <p>Total Deferred: \$21,900 <input type="checkbox"/> Expedited Order <input checked="" type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$3,600</p> <p>The Respondent paid \$3,600 of the undeferred administrative penalty. The deferred amount will be waived contingent upon compliance with this Agreed Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, commence operating the Facility under the direct supervision of a properly certified operator. Within 15 days, submit written certification demonstrating compliance with Order Provision no. 1. Within 60 days, either: <ol style="list-style-type: none"> Submit an administratively complete permit application to Bexar County Environmental Services Division, pursuant to 30 TEX. ADMIN. CODE ch. 285; or Submit an administratively complete permit application to the TCEQ, pursuant to 30 TEX. ADMIN. CODE ch. 305. Respond completely and adequately to all TCEQ and/or Bexar County requests for information concerning the permit application in Ordering Provision no. 3, above, as applicable, within 30 days after the date of such request or by any other deadline specified in writing. Immediately comply with the permit limits in expired Permit No. 10313002 until such time that authorization to operate is obtained or until 180 days after the effective date of this Order, whichever is earlier. Within 195 days, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	5-Jul-2005	Screening	2-Aug-2005	EPA Due	
	PCW	26-Oct-2005				

RESPONDENT/FACILITY INFORMATION	
Respondent	Western Trails Water Supply Corporation
Reg. Ent. Ref. No.	RN102096526
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26305	No. of Violations	2
Docket No.	2005-1335-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp
Multi-Media		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	\$ 25,500
---	-------------------	------------------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$ 0
Notes	No change due to Average Performer classification.		

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$ 0
	Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary			
Ordinary			
N/A	x	(mark with a small x)	
Notes	The respondent has not yet achieved compliance.		

Economic Benefit	0% Enhancement*	Subtotal 6	\$ 0
Total EB Amounts	\$ 953	<i>*Capped at the Total EB \$ Amount</i>	
Approx. Cost of Compliance	\$ 22,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$ 25,500
-----------------------------	-----------------------	------------------

OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$ 0
---	--	-------------------	-------------

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes		Final Penalty Amount	\$ 25,500
-------	--	-----------------------------	------------------

STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$ 25,500
-----------------------------------	--	-------------------------------	------------------

DEFERRAL	0% Reduction	Adjustment	\$ 0
-----------------	--------------	-------------------	-------------

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

Notes	This is a non-expedited case, so no deferral is offered.		
-------	--	--	--

PAYABLE PENALTY	\$ 25,500
------------------------	------------------

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
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</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) 0%

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	02-Aug-2005	Docket No.	2005-1335-MWD-E	PCW
Respondent	Western Trails Water Supply Corporation		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	26305	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102096526			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 305.42(a) and Tex. Water Code § 26.121(a)			
Secondary Rule Cite(s)				
Violation Description	Failed to submit a permit application for the continued operation of the wastewater treatment facility after the permit had expired on March 1, 2005, as documented by an investigation conducted on April 11, 2005.			
Base Penalty				\$10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		X			10%

Matrix Notes: 100 percent of the rule requirement was not met.

Adjustment - \$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events: 8

<i>mark only one use a small x</i>	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$8,000

Eight monthly events are recommended from the first day of noncompliance (March 2, 2005) to the 60-day settlement deadline (October 29, 2005).

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$142	Violation Final Penalty Total: \$8,000
This violation Final Assessed Penalty (adjusted for limits): \$8,000	

Economic Benefit Worksheet

Respondent Western Trails Water Supply Corporation
Case ID No. 26305
Reg. Ent. Reference No. RN102096526
Media [Statute] Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	----------------	-----------

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,000	01-Mar-2005	01-Aug-2006	1.4	\$142	n/a	\$142
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Cost is estimated based on administrative costs and labor associated with a permit application. Date required is the expiration date of the permit and final date is the date compliance is expected to be achieved.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,000

TOTAL \$142

Screening Date	02-Aug-2005	Docket No.	2005-1335-MWD-E	PCW
Respondent	Western Trails Water Supply Corporation		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	26305	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102096526			
Media [Statute]	Water Quality			
Enf. Coordinator	Merrilee Hupp			
Violation Number	<input type="text" value="2"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 30.350(j)"/>			
Secondary Rule Cite(s)	<input type="text"/>			
Violation Description	<input type="text" value="Failed to employ a wastewater treatment plant operator holding a Class D license or higher, as documented during the inspection conducted on April 11, 2005."/>			
Base Penalty				<input type="text" value="\$10,000"/>

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text" value="Failing to employ a licensed wastewater treatment operator may expose human health and environmental factors to pollutants above levels protective of human health and the environment."/>					

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text" value="x"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$811"/>	Violation Final Penalty Total <input type="text" value="\$17,500"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$17,500"/>	

Economic Benefit Worksheet

Respondent Western Trails Water Supply Corporation
Case ID No. 26305
Reg. Ent. Reference No. RN102096526
Media [Statute] Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
------------------	---	---------------	------------	-----	----------------	----------------	-----------

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$20,000	11-Apr-2005	01-Feb-2006	0.8	\$811	n/a	\$811

Notes for DELAYED costs: Cost is estimated salary for a licensed wastewater treatment operator. Date required is the inspection date and final date is when compliance is expected to be achieved.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$20,000

TOTAL \$811

Compliance History

Customer/Respondent/Owner-Operator:	CN600675680	Western Trails WSC	Classification: AVERAGE	Rating: 3.010
Regulated Entity:	RN102096526	MHP PLANT 2 WESTERN TRAILS WSC	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):				
Location:	Approximately 0.5 mile north of US Highway 181 and approximately 3.5 miles northwest of the intersection of US Highway 181 and Farm to Market Rd 1518		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	August 10, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 08, 2000 to August 08, 2000			

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

Name: Merrilee Hupp Phone: 512-239-4490

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |
| 6. Comments: | <u> </u> |

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
Description:
 - 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 WESTERN
TRAILS WATER SUPPLY
CORPORATION;
RN102096526**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2005-1335-MWD-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Western Trails Water Supply Corporation (“Western Trails”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Western Trails appear before the Commission and together stipulate that:

1. Western Trails owns a wastewater treatment facility approximately 0.5 miles north of U.S. Highway 181 and approximately 3.5 miles northwest of the intersection of U.S. Highway 181 and Farm-to-Market Road 1518 in Bexar County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Western Trails agree that the Commission has jurisdiction to enter this Agreed Order, and that Western Trails is subject to the Commission’s jurisdiction.
4. Western Trails received notice of the violations alleged in Section II (“Allegations”) on or about July 6, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Western Trails of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
6. An administrative penalty in the amount of twenty-five thousand five hundred dollars (\$25,500.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). The Financial Assurance Section of the Commission’s Financial

Administration Division reviewed the financial documentation submitted by Western Trails and determined that Western Trails is unable to pay part of the administrative penalty. Therefore, twenty-one thousand nine hundred dollars (\$21,900.00) of the penalty is deferred contingent upon Western Trail'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 Western Trails fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Western Trails to pay all or part of the deferred penalty.

Western Trails has paid three thousand six hundred dollars (\$3,600.00) of the undeferred administrative 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 Western Trails 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 Western Trails 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

Western Trails is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 305.42(a) and TEX. WATER CODE § 26.121(a) by failing to submit a permit application for the continued operation of the wastewater treatment facility after the permit had expired on March 1, 2005, as documented during an inspection conducted by a San Antonio Regional Office investigator on April 11, 2005.

2. 30 TEX. ADMIN. CODE § 30.350(j) by failing to employ a wastewater treatment plant operator holding a Class D license or higher, as documented during an inspection conducted by a San Antonio Regional Office investigator on April 11, 2005.

III. DENIALS

Western Trails generally denies each allegation in Section II (“Allegations”).

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Western Trails pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Western Trails’ 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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Western Trails Water Supply Corporation, Docket No. 2005-1335-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. Western Trails shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Western Trails shall commence operating the Facility under the direct supervision of a properly certified operator.
 - b. Within 15 days after the effective date of this Agreed Order, Western Trails shall submit written certification of compliance with Ordering Provision 2.a. to the address in Ordering Provision 2.f. below;
 - c. Within 60 days after the effective date of this Agreed Order, Western Trails shall submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE § 285.3(b) to:

Bexar County Environmental Services Division
233 North Pecos Street
Suite 420
San Antonio, Texas 78207

Or, submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Water Quality Applications Team, Permits
Administrative Review Section
Registration, Review and Reporting Division, MC 161
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. Western Trails shall respond completely and adequately, as determined by the TCEQ, or by Bexar County if the application is submitted to Bexar County, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing.
- e. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits in expired Permit No. 10313002; and
- f. Within 195 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

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

Western Trails shall submit all correspondence, reports, and documentation to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Mr. Tom Haberle, Water Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Western Trails. Western Trails is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Western Trails 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, Western Trails' failure to comply is not a violation of this Agreed Order. Western Trails shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Western Trails shall notify the Executive Director within seven days after Western Trails 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 Western Trails shall be made in writing to the Executive Director. Extensions are not effective until Western Trails 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 Western Trails 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.

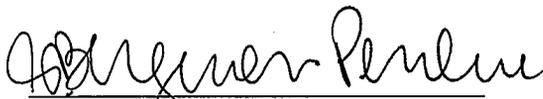
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Western Trails, or three days after the date on which the Commission mails notice of this Agreed Order to Western Trails, 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



For the Executive Director

1/12/2010

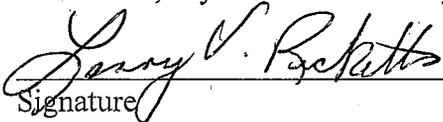
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Western Trail's compliance history;
- Greater scrutiny of any permit applications submitted by Western Trails;
- 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 against Western Trails;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Western Trails; and
- TCEQ seeking other relief as authorized by law.

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


Signature

12-30-2009
Date

Mr. Larry V. Ricketts

Member

Name (Printed or typed)

Title

Authorized representative of

Western Trails Water Supply Corporation