

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1248-MWD-E **TCEQ ID:** RN101719821 **CASE NO.:** 38133

RESPONDENT NAME: City of Madisonville

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: Madisonville Wastewater Plant, located 550 feet east of South Martin Luther King Street and 750 feet south of the intersection of South Martin Luther King Street and 4th Street, Madison County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</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 January 4, 2010. 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: The Honorable Don F. Dean, Mayor, City of Madisonville, 210 West Cottonwood Street, Madisonville, Texas 77864 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: July 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 20, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater [30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit No. WQ0010215001, Operational Requirements No. 4].</p>	<p>Total Assessed: \$4,425</p> <p>Total Deferred: \$885 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,540</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, on August 17, 2009, the Respondent submitted documentation demonstrating that they can provide adequate safeguards at the Facility during electrical power failures and have obtained a current written agreement with a contractor to provide generators when needed.</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): WQ0010215001

Attachment A
Docket Number: 2009-1248-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Madisonville

Payable Penalty Amount: Three Thousand Five Hundred Forty Dollars (\$3,540)

SEP Amount: Three Thousand Five Hundred Forty Dollars (\$3,540)

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: Madison 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.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	27-Jul-2009	Screening	3-Aug-2009	EPA Due	
	PCW	3-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Madisonville		
Reg. Ent. Ref. No.	RN101719821		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38133	No. of Violations	1
Docket No.	2009-1248-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	\$2,500
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	87.0% Enhancement	Subtotals 2, 3, & 7	\$2,175
Notes	Enhancement due to one NOV with same or similar violations, one NOV with unrelated violations, 20 self-reported monthly effluent violations and two final enforcement orders 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	\$250
Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$411	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$15,000		
SUM OF SUBTOTALS 1-7		Final Subtotal	\$4,425
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the Indicated percentage.</small>			
Notes			
		Final Penalty Amount	\$4,425
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$4,425
DEFERRAL	20.0% Reduction	Adjustment	-\$885
<small>Reduces the Final Assessed Penalty by the Indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$3,540

Screening Date 3-Aug-2009

Docket No. 2009-1248-MWD-E

PCW

Respondent City of Madisonville

Policy Revision 2 (September 2002)

Case ID No. 38133

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101719821

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)	1	5%
	Other written NOVs	21	42%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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) 87%

>> **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 one NOV with same or similar violations, one NOV with unrelated violations, 20 self-reported monthly effluent violations and two final enforcement orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 87%

Screening Date 3-Aug-2009	Docket No. 2009-1248-MWD-E	PCW		
Respondent City of Madisonville		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 38133		<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN101719821				
Media [Statute] Water Quality				
Enf. Coordinator Jennifer Graves				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit No. WQ0010215001, Operational Requirements No. 4			
Violation Description	Failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater, as documented during a record review conducted on July 14, 2009.			
	Base Penalty	<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	X	<input type="text"/>	<input type="text"/>
			Percent	<input type="text" value="25%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent	<input type="text" value="0%"/>
Matrix Notes	Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.			
	Adjustment	<input type="text" value="\$7,500"/>		
		<input type="text" value="\$2,500"/>		
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="20"/>	Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>	<input type="text"/>	
	weekly	<input type="text"/>	<input type="text"/>	
	monthly	<input type="text" value="X"/>	<input type="text"/>	
	quarterly	<input type="text"/>	<input type="text"/>	
	semiannual	<input type="text"/>	<input type="text"/>	
	annual	<input type="text"/>	<input type="text"/>	
	single event	<input type="text"/>	<input type="text"/>	
			Violation Base Penalty	<input type="text" value="\$2,500"/>
One monthly event is recommended based on the record review date (July 14, 2009) to the date of screening (August 3, 2009).				
Good Faith Efforts to Comply				
	10.0% Reduction			<input type="text" value="\$250"/>
	<small>Before NOV</small>	<small>NOV to EOPRP submission</small>		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	X		
N/A	<small>(mark with x)</small>			
Notes	The Respondent achieved compliance on August 17, 2009.			
		Violation Subtotal	<input type="text" value="\$2,250"/>	
Economic Benefit (EB) for this violation				
	Estimated EB Amount	<input type="text" value="\$411"/>	Violation Final Penalty Total	<input type="text" value="\$4,425"/>
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$4,425"/>

Economic Benefit Worksheet

Respondent City of Madisonville
 Case ID No. 38133
 Reg. Ent. Reference No. RN101719821
 Media Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment	\$15,000	27-Mar-2009	17-Aug-2009	0.39	\$20	\$392	\$411
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

Estimated cost to provide adequate safeguards at the Facility during electrical power failures. Date required is the date the violation was first documented. Final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

TOTAL

\$411

Compliance History Report

Customer/Respondent/Owner-Operator: CN600511075 City of Madisonville Classification: AVERAGE Rating: 2.26
Regulated Entity: RN101719821 MADISONVILLE WASTEWATER PLANT Classification: AVERAGE Site Rating: 2.29

ID Number(s): WASTEWATER PERMIT WQ0010215001
WASTEWATER PERMIT TPDES0026662
WASTEWATER PERMIT TX0026662
WASTEWATER LICENSING LICENSE WQ0010215001

Location: APPROX. 550 FT E OF S MARTIN
LUTHER KING ST AND 750 FT S
OF THE INTX OF S MARTIN LUTHER
KING ST AND 4TH ST, MADISON CO,
TX

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: August 05, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 05, 2004 to August 05, 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/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. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 11/19/2007

ADMINORDER 2007-0638-MWD-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)(A)

Rqmt Prov: Monitor/Report Requirements No. 7 Pg. 5 PERMIT

Description: Failure by the permittee to orally notify the TCEQ of an unauthorized discharge within 24 hours and provide written notification within 5 days of becoming aware of the noncompliance.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

Rqmt Prov: Permit Conditions, No. 2g Pg. 7 PERMIT

Description: Failure by the permittee to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission.

Effective Date: 05/03/2009

ADMINORDER 2008-1703-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(17)

Rqmt Prov: Sludge Reporting Requirements PERMIT

Description: Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2007 by September 1, 2007

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	09/17/2004	(354840)
2	10/07/2004	(354841)
3	11/08/2004	(383371)
4	12/10/2004	(383372)
5	01/07/2005	(383373)
6	03/11/2005	(442180)
7	04/06/2005	(442181)
8	05/06/2005	(442182)
9	06/10/2005	(442183)
10	07/07/2005	(442184)
11	08/05/2005	(442185)
12	09/13/2005	(442186)
13	10/10/2005	(471112)
14	11/14/2005	(471113)
15	12/14/2005	(471114)
16	03/27/2007	(535037)
17	09/11/2007	(571354)
18	12/04/2007	(610823)
19	02/13/2008	(596961)
20	02/29/2008	(618353)
21	05/19/2008	(691155)
22	05/19/2008	(691156)
23	05/19/2008	(691157)
24	05/19/2008	(691158)
25	05/19/2008	(691159)
26	05/19/2008	(691160)
27	05/19/2008	(691161)
28	05/19/2008	(691162)
29	05/19/2008	(691163)
30	05/19/2008	(691164)
31	05/19/2008	(691165)
32	05/19/2008	(691166)
33	05/19/2008	(691167)
34	05/19/2008	(691168)
35	05/19/2008	(691169)
36	05/19/2008	(691170)
37	05/19/2008	(691171)
38	05/19/2008	(691172)
39	05/19/2008	(691173)
40	05/19/2008	(691174)
41	05/19/2008	(691175)
42	05/19/2008	(691176)

43 05/19/2008 (691177)
 44 05/19/2008 (691178)
 45 05/19/2008 (691179)
 46 05/19/2008 (691180)
 47 05/19/2008 (691181)
 48 05/19/2008 (691182)
 49 05/19/2008 (691183)
 50 06/06/2008 (712037)
 51 07/10/2008 (712038)
 52 09/04/2008 (712040)
 53 09/30/2008 (728427)
 54 10/02/2008 (728428)
 55 10/23/2008 (704958)
 56 10/29/2008 (712039)
 57 11/13/2008 (728429)
 58 12/08/2008 (751527)
 59 01/13/2009 (751528)
 60 02/06/2009 (751525)
 61 03/06/2009 (751526)
 62 04/03/2009 (740465)
 63 05/12/2009 (613784)
 64 06/04/2009 (747807)
 65 07/22/2009 (762169)

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

Date: 08/26/2005 (349108)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)
 Mon. & Rptng. Req. N. 7 P. 5 PERMIT
 Description: Failure by the permittee to orally notify the TCEQ of an unauthorized discharge within 24 hours and provide written notification within 5 days of becoming aware of the noncompliance.

Self Report? NO Classification: Moderate
 Citation: Permit Conditions, No. 2g Pg. 7 PERMIT
 TWC Chapter 26 26.121(a)
 Description: Failure by the permittee to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission.

Date: 09/30/2005 (471112) CN600511075
 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: 01/31/2006 (691155) CN600511075
 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: 03/31/2006 (691161) CN600511075
 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: 04/30/2006 (691164) CN600511075
 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: 05/31/2006 (691167) CN600511075
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: 06/30/2006 (691169) CN600511075
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: 07/31/2006 (691171) CN600511075
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: 09/30/2006 (691175) CN600511075
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: 03/31/2007 (691162) CN600511075
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: 04/30/2007 (691165) CN600511075
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 (691168) CN600511075
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 (691170) CN600511075
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2007 (691174) CN600511075
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 (691176) CN600511075

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 (691163) CN600511075
 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 (691166) CN600511075
 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 (712037) CN600511075
 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 (712038) CN600511075
 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 (712039) CN600511075
 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 (712040) CN600511075
 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: 03/27/2009 (740465) CN600511075
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 Operational Requirement; No. 4, Pg. 10 PERMIT
 Description: Failure to install and subsequently maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

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
CITY OF MADISONVILLE
RN101719821**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1248-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 City of Madisonville ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located 550 feet east of South Martin Luther King Street and 750 feet south of the intersection of South Martin Luther King Street and 4th Street, in Madison County, Texas (the "Facility").
2. The City has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about July 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 City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Four Thousand Four Hundred Twenty-Five Dollars (\$4,425) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Three Thousand Five Hundred Forty Dollars (\$3,540) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP") and Eight Hundred Eighty-Five Dollars (\$885) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City 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 City 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, on August 17, 2009, the City submitted documentation demonstrating that they can provide adequate safeguards at the Facility during electrical power failures and have obtained a current written agreement with a contractor to provide generators when needed.
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 City 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 City is alleged to have failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit No. WQ0010215001, Operational Requirements No. 4, and documented during a record review conducted on July 14, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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: City of Madisonville, Docket No. 2009-1248-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 City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above Three Thousand Five Hundred Forty Dollars (\$3,540) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City'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 City. The City 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 City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City 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 City 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 City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

12/11/2009
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.

Don F. Dear
Signature

10-28-09
Date

DON F. DEAR
Name (Printed or typed)
Authorized Representative of
City of Madisonville

Mayor
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: 2009-1248-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Madisonville
Payable Penalty Amount:	Three Thousand Five Hundred Forty Dollars (\$3,540)
SEP Amount:	Three Thousand Five Hundred Forty Dollars (\$3,540)
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:	Madison 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.

