

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-2040-EAQ-E **TCEQ ID:** RN105391080 **CASE NO.:** 38869
RESPONDENT NAME: City of San Marcos

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 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Wonder World Drive FM 3407, located at Farm-to-Market Road 3407 between Hunter Road and Ranch Road 12, San Marcos, Hays County</p> <p>TYPE OF OPERATION: Road and force main wastewater line construction project</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 June 7, 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: Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Sabas Avila, Assistant Director of Public Services, City of San Marcos, 630 East Hopkins, San Marcos, Texas 78666 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 29, 2009</p> <p>Date of NOV/NOE Relating to this Case: December 7, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain approval of a sewage collection system ("SCS") plan prior to commencing construction of a regulated activity over the Edwards Aquifer Recharge and Transition Zone. Specifically, before submitting an SCS plan for approval, approximately 1,570 feet of new force main wastewater line was installed along the right-of-way of the road project constructed under Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-08040302, approved May 23, 2008 [30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(2)].</p> <p>2) Failure to prevent an unauthorized discharge of sediment into or adjacent to water in the state by properly dewatering excavated areas through appropriately selected best management practices ("BMP"). Specifically, sediment was discharged to an intermittent stream that flows to Purgatory Creek when storm water in Water Quality Pond No. 2 was not properly filtered during dewatering [TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 213.4(k), and Edwards Aquifer WPAP No. 11-08040302, Special Conditions No. 2].</p>	<p>Total Assessed: \$4,750</p> <p>Total Deferred: \$950 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,800</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent received approval on December 3, 2009 for the organized SCS plan submitted to the TCEQ Austin Region Office on October 16, 2009.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Remove, to the extent possible, accumulated sediment discharged from Water Quality Pond No. 2 which remains in the intermittent stream bed below the water quality pond; and</p> <p>ii. Update operational guidance to include periodic training for staff to ensure all dewatering BMPs are regularly inspected and properly maintained.</p> <p>b. Within 45 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 No. 2.a.</p>

Additional ID No(s): 11-08040302

Attachment A
Docket Number: 2009-2040-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of San Marcos
Payable Penalty Amount: Three Thousand Eight Hundred Dollars (\$3,800)
SEP Amount: Three Thousand Eight Hundred Dollars (\$3,800)
Type of SEP: Pre-approved
Third-Party Recipient: Hill Country Conservancy - Wenzel Tract Quarry - Edwards Aquifer Recharge & Wetland Restoration
Location of SEP: Hays 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 Wenzel Tract Quarry is on an 85-acre property in Hays County, acquired by the Hill Country Conservancy and City of Austin to serve as an aquifer enhancement area for the Edwards Aquifer.

This project involves using the quarry to capture and hold diverted storm flow until it can be absorbed or recharged into the aquifer. It has been estimated that the quarry could divert up to 275 acre feet of storm runoff into the aquifer annually. This would help protect against low or cessation of flow to Barton Springs, which is comprised of four springs that provide the only known habitat for two species of Plethodontid salamanders, *Eurycea sosorum*, the Barton Springs Salamander, and *Eurycea waterlooensis*, the Austin Blind Salamander. *Eurycea sosorum* was federally listed as endangered in 1998 and *Eurycea waterlooensis* is being evaluated for listing by the United States Fish and Wildlife Service. Additionally, the quarry is expected to attract nesting ducks and other waterfowl through mudflats and shallow water retention areas.

Performing Party shall use SEP Funds on the property to:

1) Remove invasive plants; 2) provide native plantings; 3) perform water sampling and analysis; 4) create mudflats and shallow water retention areas; 5) provide nesting structures for birds; 6) restore and enhance wetlands; and 7) construct diversion channel to capture storm flow for aquifer recharge enhancement.

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

The Project will provide a discernible environmental benefit by enhancing recharge of the Barton Springs Edwards Aquifer & Colorado River in Hays and Travis counties. Additionally, the project will restore native habitat and provide areas attractive to birds as well as nesting ducks and other waterfowl.

C. Minimum Expenditure

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:

George Cofer, Executive Director
Hill Country Conservancy
P.O. Box 163125
Austin, Texas 78716-3125

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Dec-2009	Screening	16-Dec-2009	EPA Due	
	PCW	3-Mar-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	City of San Marcos		
Reg. Ent. Ref. No.	RN105391080		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38869	No. of Violations	1
Docket No.	2009-2040-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *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	\$11
Approx. Cost of Compliance	\$1,285

*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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 16-Dec-2009

Docket No. 2009-2040-EAQ-E

PCW

Respondent City of San Marcos

Policy Revision 2 (September 2002)

Case ID No. 38869

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105391080

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha, P.G.

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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)

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

No change due to Compliance History.

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

Screening Date 16-Dec-2009

Docket No. 2009-2040-EAQ-E

PCW

Respondent City of San Marcos

Policy Revision 2 (September 2002)

Case ID No. 38869

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105391080

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 213.4(a)(1) and 213.5(a)(2)

Violation Description

Failed to obtain approval of an organized sewage collection system plan ("SCS") prior to commencing construction of a regulated activity over the Edwards Aquifer Recharge and Transition Zone. Specifically, before submitting an SCS plan for approval, approximately 1,570 feet of new force main wastewater line was installed along the right-of-way of the road project constructed under Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-08040302, approved May 23, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

66 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three monthly events are recommended from the September 29, 2009 investigation date until the December 3, 2009 date of compliance.

Good Faith Efforts to Comply

25.0% Reduction \$750

Extraordinary

Ordinary

N/A

Before NOV

NOV to EDRP/ Settlement Offer

(mark with x)

Notes

Compliance was achieved on December 3, 2009.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Estimated EB Amount \$11

Statutory Limit Test

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent City of San Marcos
Case ID No. 38869
Reg. Ent. Reference No. RN105391080
Media Edwards Aquifer
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	\$1,285	29-Sep-2009	3-Dec-2009	0.18	\$11	n/a	\$11
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to prepare and submit the SCS plan (\$500) and application fees (1,570 linear ft @ \$0.50/ linear ft = \$785). The date required is the investigation date and the final date is the SCS plan approval date.

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	\$1,285	TOTAL	\$11
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Dec-2009	Screening	16-Dec-2009	EPA Due	
	PCW	3-Mar-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of San Marcos		
Reg. Ent. Ref. No.	RN105391080		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38869	No. of Violations	1
Docket No.	2009-2040-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *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 0.0% Enhancement *Subtotals 2, 3, & 7*

Notes

Culpability No 0.0% Enhancement *Subtotal 4*

Notes

Good Faith Effort to Comply Total Adjustments *Subtotal 5*

Economic Benefit 0.0% Enhancement* *Subtotal 6*

Total EB Amounts *Capped at the Total EB \$ Amount
Approx. Cost of Compliance

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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 16-Dec-2009

Docket No. 2009-2040-EAQ-E

PCW

Respondent City of San Marcos

Policy Revision 2 (September 2002)

Case ID No. 38869

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105391080

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha, P.G.

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No change due to Compliance History.

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

Screening Date 16-Dec-2009

Docket No. 2009-2040-EAQ-E

PCW

Respondent City of San Marcos

Policy Revision 2 (September 2002)

Case ID No. 38869

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN105391080

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121, 30 Tex. Admin. Code § 213.4(k), and Edwards Aquifer WPAP No. 11-08040302, Special Conditions No. 2

Violation Description Failed to prevent an unauthorized discharge of sediment into or adjacent to water in the state by properly dewatering excavated areas through appropriately selected best management practices ("BMP"). Specifically, sediment was discharged to an intermittent stream that flows to Purgatory Creek when storm water in Water Quality Pond No. 2 was not properly filtered during dewatering.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 79

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the September 29, 2009 investigation date until the case screening date on December 16, 2009.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The City does not meet the good faith criteria for this violation.

\$0

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Estimated EB Amount \$26

Statutory Limit Test

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent City of San Marcos
Case ID No. 38869
Reg. Ent. Reference No. RN105391080
Media Edwards Aquifer
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
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	\$500	29-Sep-2009	8-Aug-2010	0.86	\$21	n/a	\$21
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	29-Sep-2009	8-Aug-2010	0.86	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to remove, to the extent possible, accumulated sediment remaining in the intermittent stream bed and train staff to properly maintain all dewatering BMPs. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$600

TOTAL

\$26

Compliance History Report

Customer/Respondent/Owner-Operator: CN600521272 City of San Marcos Classification: AVERAGE Rating: 3.74
Regulated Entity: RN105391080 WONDER WORLD DRIVE FM 3407 Classification: AVERAGE BY Site Rating:3.01
DEFAULT
ID Number(s): EDWARDS AQUIFER REGISTRATION 11-08040303
EDWARDS AQUIFER REGISTRATION 11-08040302
EDWARDS AQUIFER REGISTRATION 11-08011401
Location: FM 3407 BETWEEN HUNTER RD & RR 12
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: December 15, 2009
Agency Decision Requiring Compliance Enforcement
Compliance Period: December 15, 2004 to December 15, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Jecha Phone: 239 - 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
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 12/07/2009 (776976)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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 SAN MARCOS
RN105391080**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-2040-EAQ-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 City of San Marcos ("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 road and force main wastewater line construction project at Farm-to-Market Road 3407 between Hunter Road and Ranch Road 12 in San Marcos, Hays County, Texas (the "Site").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the 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 December 12, 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 Seven Hundred Fifty Dollars (\$4,750) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Nine Hundred Fifty Dollars (\$950) 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. Three Thousand Eight Hundred Dollars (\$3,800) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

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 the City received approval on December 3, 2009 for the organized sewage collection system ("SCS") plan submitted to the TCEQ Austin Region Office on October 16, 2009.
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 Site, the City is alleged to have:

1. Failed to obtain approval of an SCS plan prior to commencing construction of a regulated activity over the Edwards Aquifer Recharge and Transition Zone, in violation of 30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.5(a)(2), as documented during an investigation conducted on September 29, 2009. Specifically, before submitting an SCS plan for approval, approximately 1,570 feet of new force main wastewater line was installed along the right-of-way of the road project constructed under Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 11-08040302, approved May 23, 2008.
2. Failed to prevent an unauthorized discharge of sediment into or adjacent to water in the state by properly dewatering excavated areas through appropriately selected best management practices ("BMP"), in violation of TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 213.4(k), and Edwards Aquifer WPAP No. 11-08040302, Special Conditions No. 2, as documented during an investigation conducted on September 29, 2009. Specifically, sediment was discharged to an

intermittent stream that flows to Purgatory Creek when storm water in Water Quality Pond No. 2 was not properly filtered during dewatering.

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 San Marcos, Docket No. 2009-2040-EAQ-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 Eight Hundred Dollars (\$3,800) of the assessed administrative penalty shall be offset with the condition that the City implements 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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Remove, to the extent possible, accumulated sediment discharged from Water Quality Pond No. 2 which remains in the intermittent stream bed below the water quality pond; and
 - ii. Update operational guidance to include periodic training for staff to ensure all dewatering BMPs are regularly inspected and properly maintained; and
 - b. Within 45 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:

Water Section, Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

4. 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 Site operations referenced in this Agreed Order.
5. 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.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the 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.
7. 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.

8. 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.

9. 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



For the Executive Director

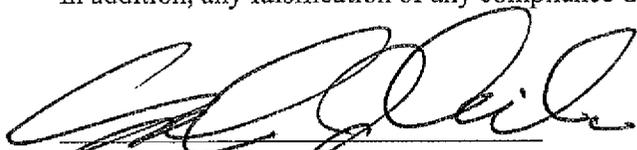
5/7/2010
Date

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

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

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

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



Signature

4/1/10
Date

CARLOS AVILA

Name (Printed or typed)
Authorized Representative of
City of San Marcos

ASST. DIRECTOR

Title OF PUBLIC SERVICES

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: 2009-2040-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of San Marcos
Payable Penalty Amount:	Three Thousand Eight Hundred Dollars (\$3,800)
SEP Amount:	Three Thousand Eight Hundred Dollars (\$3,800)
Type of SEP:	Pre-approved
Third-Party Recipient:	Hill Country Conservancy - Wenzel Tract Quarry - Edwards Aquifer Recharge & Wetland Restoration
Location of SEP:	Hays 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.

I. Project Description

A. Project

The Wenzel Tract Quarry is on an 85-acre property in Hays County, acquired by the Hill Country Conservancy and City of Austin to serve as an aquifer enhancement area for the Edwards Aquifer.

This project involves using the quarry to capture and hold diverted storm flow until it can be absorbed or recharged into the aquifer. It has been estimated that the quarry could divert up to 275 acre feet of storm runoff into the aquifer annually. This would help protect against low or cessation of flow to Barton Springs, which is comprised of four springs that provide the only known habitat for two species of Plethodontid salamanders, *Eurycea sosorum*, the Barton Springs Salamander, and *Eurycea waterlooensis*, the Austin Blind Salamander. *Eurycea sosorum* was federally listed as endangered in 1998 and *Eurycea waterlooensis* is being evaluated for listing by the United States Fish and Wildlife Service. Additionally, the quarry is expected to attract nesting ducks and other waterfowl through mudflats and shallow water retention areas.

Performing Party shall use SEP Funds on the property to:

1) Remove invasive plants; 2) provide native plantings; 3) perform water sampling and analysis; 4) create mudflats and shallow water retention areas; 5) provide nesting structures for birds; 6) restore and enhance wetlands; and 7) construct diversion channel to capture storm flow for aquifer recharge enhancement.

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

The Project will provide a discernible environmental benefit by enhancing recharge of the Barton Springs Edwards Aquifer & Colorado River in Hays and Travis counties. Additionally, the project will restore native habitat and provide areas attractive to birds as well as nesting ducks and other waterfowl.

C. Minimum Expenditure

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:

George Cofer, Executive Director
Hill Country Conservancy
P.O. Box 163125
Austin, Texas 78716-3125

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

