

**Executive Summary – Enforcement Matter – Case No. 41591**

**VILLAGE FARMS, L.P.  
RN100818087 and RN100817873  
Docket No. 2011-0686-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

PWS

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Village Farms of Texas ("Facility 1"), located at State Highway 17 South, Jeff Davis County; and

Village Farms of Marfa ("Facility 2"), located at State Highway 17 North, Presidio County

**Type of Operation:**

Public water supplies

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 12, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$4,807

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$2,404

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$2,403

Name of SEP: Trans-Pecos Water & Land Trust – *Trans-Pecos Water Rights Acquisition Project*

**Compliance History Classifications (RN100818087):**

Person/CN - Average

Site/RN - Average by Default

**Compliance History Classifications (RN100817873):**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41591  
VILLAGE FARMS, L.P.  
RN100818087 and RN100817873  
Docket No. 2011-0686-PWS-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** March 7, 2011 and April 18, 2011

**Date(s) of NOE(s):** April 26, 2011

***Violation Information***

Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to collect routine samples [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six months of compliance monitoring and reporting;
  - b. Within 30 days, implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facilities; and
  - c. Within 180 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 41591**  
**VILLAGE FARMS, L.P.**  
**RN100818087 and RN100817873**  
**Docket No. 2011-0686-PWS-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Andrea Byington, Enforcement Division,  
Enforcement Team 2, MC 169, (512) 239-2579; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** Phillip Hampsten, SEP Coordinator, Enforcement Division,  
MC 219, (512) 239-6732

**Respondent:** Michael Bledsoe, Ph.D., Vice President of Regulatory Affairs, VILLAGE  
FARMS, L.P., 7 Christopher Way, Eatontown, New Jersey 07724-3325

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2011-0686-PWS-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Village Farms, L.P.

**Penalty Amount:** Four Thousand Eight Hundred Seven Dollars (\$4,807)

**SEP Offset Amount:** Two Thousand Four Hundred Three Dollars (\$2,403)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** Trans-Pecos Water & Land Trust – *Trans-Pecos Water Rights Acquisition Project*

**Location of SEP:** Rio Grande River Basin; including Andrews, Brewster, Cameron, Crane, Crockett, Culberson, Dimmit, Ector, Edwards, El Paso, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kinney, Loving, Maverick, Pecos, Presidio, Reagan, Reeves, Schleicher, Starr, Sutton, Terrell, Upton, Val Verde, Ward, Webb, Winkler, and Zapata Counties

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Trans-Pecos Water & Land Trust** for the *Trans-Pecos Water Rights Acquisition Project*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to acquire, by lease or purchase, surface water rights from various owners of existing water rights in the Rio Grande River Basin in Texas. Within 30 days after water rights are acquired, Third-Party Recipient shall then apply to TCEQ to administratively amend the water rights permit or certificate of adjudication (collectively referred to as “permit”) pursuant to Water Code, Section 11.0237. If water rights are purchased, Third-Party Recipient shall change the use exclusively to instream flows dedicated to environmental needs. If the water rights are leased, Third-Party Recipient shall either change the use exclusively to or add a use for instream flows dedicated to environmental needs.

Village Farms, L.P.  
Agreed Order - Attachment A

However, even if a water rights permit allows for other uses in addition to instream flows, Third-Party Recipient shall only exercise the instream flow use during its lease of the water rights acquired through the SEP.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

The Project will enhance the quality of the environment by dedicating water in the Rio Grande River for environmental and conservation purposes, benefitting overall protection of water quality as well as aquatic and riparian wildlife habitat. The Rio Grande River Basin is extensive and relied upon for numerous needs, including human consumption and agriculture as well as by aquatic and riparian wildlife. While two international dams—Amistad and Falcon—are used for flood control, irrigation, and help regulate the flow of the river, the geography of the area and drought-prone conditions can impact the quality of water and habitat. Reduced flow, which can cause high salinity water, impacts the reliability of the Rio Grande for its use by farmers, livestock, and wildlife. In addition, non-native plants invade where native plants (or no plants) used to grow, which further affects water loss along the river. Dedicating water in the Rio Grande River for overall protection of water quality as well as aquatic and riparian wildlife habitat will enhance the quality of the environment consistent with Water Code, Section 7.067.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset 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, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Village Farms, L.P.  
Agreed Order - Attachment A

Trans-Pecos Water & Land Trust  
David Crum, Executive Director  
601 North State Street  
Fort Davis, Texas 79734

### 3. **Records and Reporting**

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

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

### 4. **Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

### 5. **Publicity**

Any public statements concerning this SEP made by or on behalf of 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**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, 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 Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for 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**

<b>DATES</b>	<b>Assigned PCW</b>	2-May-2011	<b>Screening</b>	5-May-2011	<b>EPA Due</b>	30-Jun-2011
--------------	---------------------	------------	------------------	------------	----------------	-------------

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	VILLAGE FARMS, L.P. (Village Farms of Texas)	
<b>Reg. Ent. Ref. No.</b>	RN100818087	
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b> Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41591	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0686-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Byington
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

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

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

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

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

**Notes**

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

**Notes**

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

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

Total EB Amounts	\$222
Approx. Cost of Compliance	\$305

\*Capped at the Total EB \$ Amount

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

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

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

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

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 5-May-2011

**Docket No.** 2011-0686-PWS-E

**PCW**

**Respondent** VILLAGE FARMS, L.P. (Village Farms of Texas)

Policy Revision 2 (September 2002)

**Case ID No.** 41591

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN100818087

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Andrea Byington

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

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)** 23%

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

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for three NOVs with same violations and four NOVs with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 23%

Screening Date 5-May-2011

Docket No. 2011-0686-PWS-E

PCW

Respondent VILLAGE FARMS, L.P. (Village Farms of Texas)

Policy Revision 2 (September 2002)

Case ID No. 41591

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100818087

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(I) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description

Failed to collect routine distribution water samples for coliform analysis for the months of August 2010 through February 2011 and failed to provide public notification of the failure to collect routine samples for the months of August 2010 through January 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

Matrix Notes

Failure to properly sample may expose the public to a significant amount of undetected contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 7

211 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,750

Seven monthly events are recommended calculated for the months in which routine samples were not collected.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$222

Violation Final Penalty Total \$2,372

This violation Final Assessed Penalty (adjusted for limits) \$2,372

## Economic Benefit Worksheet

**Respondent** VILLAGE FARMS, L.P. (Village Farms of Texas)  
**Case ID No.** 41591  
**Req. Ent. Reference No.** RN100818087  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	7-Mar-2011	1-Oct-2011	0.57	\$3	n/a	\$3

Notes for DELAYED costs

The delayed costs include the estimated amount to develop a protocol to ensure all necessary public notifications are provided in a timely manner, calculated from the record review date to the estimated 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]	\$175	31-Aug-2010	28-Feb-2011	1.41	\$12	\$175	\$187
Other (as needed)	\$30	1-Dec-2010	1-May-2011	1.33	\$2	\$30	\$32

Notes for AVOIDED costs

The one-time avoided costs include the estimated amount necessary to conduct routine monthly monitoring sampling (estimated at \$25 per sample). Other costs include the estimated amount to provide public notice (estimated at \$5 per month), calculated for the months in which routine monitoring sampling and public notification did not occur.

Approx. Cost of Compliance

\$305

**TOTAL**

\$222

# Compliance History

Customer/Respondent/Owner-Operator: CN600500706 Village Farms, L.P. Classification: AVERAGE Rating: 4.50  
Regulated Entity: RN100818087 VILLAGE FARMS OF TEXAS Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
ID Number(s): AIR NEW SOURCE PERMIT 944559P  
ACCOUNT NUMBER 1220012  
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION  
Location: STATE HIGHWAY 17 SOUTH, JEFF DAVIS COUNTY, TEXAS  
TCEQ Region: REGION 06 - EL PASO  
Date Compliance History Prepared: May 02, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 02, 2006 to May 02, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrea Byington Phone: (512) 239-2579

## 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: 9/1/2010 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.  
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	10/02/2007	(572993)
2	01/25/2008	(651944)
3	07/20/2007	(652541)
4	08/30/2007	(652780)
5	05/06/2008	(654930)
6	01/09/2009	(722932)
7	08/13/2010	(829846)
8	04/19/2011	(913234)
9	04/20/2011	(913393)
10	04/20/2011	(913405)
11	04/26/2011	(913743)

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

Date: 07/20/2007 (652541) CN600500706  
Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)  
Description: NITRATE

Date: 08/30/2007 (652780)

CN600500706

Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)  
Description: NITRATE

Date: 01/25/2008 (651944)

CN600500706

Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)  
Description: NITRATE

Date: 04/07/2009 (913234)

CN600500706

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 01/2009 - Failure to collect any of the required monthly sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: TCR PN Routine Monitoring Violation 01/2009 - Failure to post public notice for not collecting any of the required monthly sample(s).

Date: 03/16/2010 (913393)

CN600500706

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 01/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: TCR PN Routine Monitoring Violation 01/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 08/13/2010 (829846)

CN600500706

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)  
Description: Failure to protect all completed well units by intruder-resistant fences, the gates of which are provided with locks. The gates shall be locked during periods of darkness and when the plant is unattended. Specifically, the existing wire fence was not intruder-resistant.

Date: 03/10/2011 (913405)

CN600500706

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 01/2011 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: TCR PN Routine Monitoring Violation 01/2011- Failure to post public notice for not collecting any routine monitoring sample(s).

- 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



**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

<b>TCEQ</b>	<b>DATES</b>	<b>Assigned PCW</b>	2-May-2011 6-Jun-2011	<b>Screening</b>	5-May-2011	<b>EPA Due</b>	30-Jun-2011
-------------	--------------	---------------------	--------------------------	------------------	------------	----------------	-------------

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	VILLAGE FARMS, L.P. (Village Farms of Marfa)
<b>Reg. Ent. Ref. No.</b>	RN100817873
<b>Facility/Site Region</b>	6-El Paso
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41591	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0686-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Byington
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

**Penalty Calculation Section**

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,750</b>
---	-------------------	----------------

<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	27.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> \$472

**Notes:** Enhancement for one NOV with same violations, one NOV with dissimilar violations and one order with a denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

**Notes:** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$216
Approx. Cost of Compliance	\$300

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$2,222</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	9.6%	<b>Adjustment</b>	<b>\$214</b>
---	------	-------------------	--------------

**Notes:** Enhancement recommended to recover avoided costs of compliance.

<b>Final Penalty Amount</b>	<b>\$2,436</b>
-----------------------------	----------------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$2,436</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
-----------------	----------------	-------------------	------------

**Notes:** No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$2,436</b>
------------------------	----------------

Screening Date 5-May-2011

Docket No. 2011-0686-PWS-E

PCW

Respondent VILLAGE FARMS, L.P. (Village Farms of Marfa)

Policy Revision 2 (September 2002)

Case ID No. 41591

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100817873

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

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) 27%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same violations, one NOV with dissimilar violations and one order with a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 5-May-2011

Docket No. 2011-0686-PWS-E

PCW

Respondent VILLAGE FARMS, L.P. (Village Farms of Marfa)

Policy Revision 2 (September 2002)

Case ID No. 41591

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100817873

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine distribution water samples for coliform analysis for the months of August 2010 through February 2011 and failed to provide public notification of the failure to collect routine samples for the months of August 2010 through December 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes Failure to properly sample may expose the public to a significant amount of undetected contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 7 211 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,750

Seven monthly events are recommended calculated for the months in which routine samples were not collected.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$1,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$216

Violation Final Penalty Total \$2,437

This violation Final Assessed Penalty (adjusted for limits) \$2,437

## Economic Benefit Worksheet

**Respondent** VILLAGE FARMS, L.P. (Village Farms of Marfa)  
**Case ID No.** 41591  
**Req. Ent. Reference No.** RN100817873  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Apr-2011	1-Oct-2011	0.45	\$2	n/a	\$2

Notes for DELAYED costs

The delayed costs include the estimated amount to develop a protocol to ensure all necessary public notifications are provided in a timely manner, calculated from the record review date to the estimated 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]	\$175	31-Aug-2010	28-Feb-2011	1.41	\$12	\$175	\$187
Other (as needed)	\$25	1-Dec-2010	1-Apr-2011	1.25	\$2	\$25	\$27

Notes for AVOIDED costs

The one-time avoided costs include the estimated amount necessary to conduct routine monthly monitoring sampling (estimated at \$25 per sample). Other costs include the estimated amount to provide public notice (estimated at \$5 per month), calculated for the months in which routine monitoring sampling and public notification did not occur.

Approx. Cost of Compliance

\$300

**TOTAL**

\$216

# Compliance History

Customer/Respondent/Owner-Operator: CN600500706 Village Farms, L.P. Classification: AVERAGE Rating: 4.50  
Regulated Entity: RN100817873 VILLAGE FARMS OF MARFA Classification: AVERAGE Site Rating: 12.50  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1890013  
Location: STATE HIGHWAY 17 NORTH, PRESIDIO COUNTY, TEXAS  
TCEQ Region: REGION 06 - EL PASO  
Date Compliance History Prepared: May 02, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 02, 2006 to May 02, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrea Byington Phone: (512) 239-2579

## 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: 9/1/2010 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: 01/28/2010 ADMINORDER 2009-1177-MSW-E  
Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted on June 9, 2009. Specifically, approximately 350 tons (2,100 cubic yards) of baled tomato plants were disposed of at an unauthorized facility located at 1500 Evans Ranch Road, Fort Davis, Jeff Davis County, Texas (the "Site").
- 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 | 05/31/2007 | (536953) |
| 2 | 05/02/2008 | (654809) |
| 3 | 01/09/2009 | (722997) |
| 4 | 07/02/2009 | (748850) |
| 5 | 03/22/2010 | (794835) |
| 6 | 08/16/2010 | (829839) |
| 7 | 04/19/2011 | (913311) |
| 8 | 04/26/2011 | (913553) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 10/31/2006 (515460)  
Self Report? NO Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
Description: Failure to prevent an unauthorized wastewater discharge.
- Date: 01/13/2010 (913311) CN600500706

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 11/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)  
Description: TCR PN Routine Monitoring Violation 11/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

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  
VILLAGE FARMS, L.P.  
RN100818087  
RN100817873

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

**AGREED ORDER**  
**DOCKET NO. 2011-0686-PWS-E**

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

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

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

## I. FINDINGS OF FACT

1. The Respondent owns and operates public water supplies that serve at least 25 people per day for at least 60 days per year at the following locations in Texas (“the Facilities”):
  - a. Village Farms of Texas (“Facility 1”), located at State Highway 17 South, Jeff Davis County, Texas that has approximately one service connection; and
  - b. Village Farms of Marfa (“Facility 2”), located at State Highway 17 North, Presidio County, Texas that has approximately one service connection.
2. During a record review conducted on March 7, 2011, for Facility 1, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of August 2010 through February 2011 and did not provide public notification of the failure to collect routine samples for the months of August 2010 through January 2011.
3. During a record review conducted on April 18, 2011, for Facility 2, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of August 2010 through February 2011 and did not provide public notification of the failure to collect routine samples for the months of August 2010 through December 2010.
4. The Respondent received notice of the violations on May 1, 2011.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact Nos. 2 and 3, the Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to collect routine samples, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).

3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Four Thousand Eight Hundred Seven Dollars (\$4,807) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid Two Thousand Four Hundred Four Dollars (\$2,404) of the administrative penalty. Two Thousand Four Hundred Three Dollars (\$2,403) shall be conditionally offset by the Respondent's completion of the Supplemental Environmental Project ("SEP").

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Four Thousand Eight Hundred Seven Dollars (\$4,807) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: VILLAGE FARMS, L.P., Docket No. 2011-0686-PWS-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Two Thousand Four Hundred Three Dollars (\$2,403) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP

defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The Respondent shall undertake the following technical requirements at the Facilities:
  - a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliance monitoring and reporting;
  - b. Within 30 days after the effective date of this Agreed Order, implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facilities, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
  - c. Within 180 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original

signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

R. D. Hyde

For the Executive Director

9/12/11

Date

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

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

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

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

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

Michael E. Bledsoe

Signature

June 23, 2011

Date

MICHAEL E. Bledsoe, Ph.D.

Name (Printed or typed)

VP Regulatory Affairs

Title

Authorized Representative of  
VILLAGE FARMS, L.P.

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order



**Attachment A**  
**Docket Number: 2011-0686-PWS-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Village Farms, L.P.

**Penalty Amount:** Four Thousand Eight Hundred Seven Dollars  
(\$4,807)

**SEP Offset Amount:** Two Thousand Four Hundred Three Dollars  
(\$2,403)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** Trans-Pecos Water & Land Trust – *Trans-Pecos Water Rights Acquisition Project*

**Location of SEP:** Rio Grande River Basin; including Andrews, Brewster, Cameron, Crane, Crockett, Culberson, Dimmit, Ector, Edwards, El Paso, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kinney, Loving, Maverick, Pecos, Presidio, Reagan, Reeves, Schleicher, Starr, Sutton, Terrell, Upton, Val Verde, Ward, Webb, Winkler, and Zapata Counties

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Trans-Pecos Water & Land Trust** for the *Trans-Pecos Water Rights Acquisition Project*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to acquire, by lease or purchase, surface water rights from various owners of existing water rights in the Rio Grande River Basin in Texas. Within 30 days after water rights are acquired, Third-Party Recipient shall then apply to TCEQ to administratively amend the water rights permit or certificate of adjudication (collectively referred to as “permit”) pursuant to Water Code, Section 11.0237. If water rights are purchased, Third-Party Recipient shall change the use exclusively to instream flows dedicated to environmental needs. If the water rights are leased, Third-Party Recipient shall either change the use exclusively to or add a use for instream flows dedicated to environmental needs.

Village Farms, L.P.  
Agreed Order - Attachment A

However, even if a water rights permit allows for other uses in addition to instream flows, Third-Party Recipient shall only exercise the instream flow use during its lease of the water rights acquired through the SEP.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

#### B. Environmental Benefit

The Project will enhance the quality of the environment by dedicating water in the Rio Grande River for environmental and conservation purposes, benefitting overall protection of water quality as well as aquatic and riparian wildlife habitat. The Rio Grande River Basin is extensive and relied upon for numerous needs, including human consumption and agriculture as well as by aquatic and riparian wildlife. While two international dams—Amistad and Falcon—are used for flood control, irrigation, and help regulate the flow of the river, the geography of the area and drought-prone conditions can impact the quality of water and habitat. Reduced flow, which can cause high salinity water, impacts the reliability of the Rio Grande for its use by farmers, livestock, and wildlife. In addition, non-native plants invade where native plants (or no plants) used to grow, which further affects water loss along the river. Dedicating water in the Rio Grande River for overall protection of water quality as well as aquatic and riparian wildlife habitat will enhance the quality of the environment consistent with Water Code, Section 7.067.

#### C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset 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, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Village Farms, L.P.  
Agreed Order - Attachment A

Trans-Pecos Water & Land Trust  
David Crum, Executive Director  
601 North State Street  
Fort Davis, Texas 79734

### 3. **Records and Reporting**

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

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

### 4. **Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

### 5. **Publicity**

Any public statements concerning this SEP made by or on behalf of 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**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, 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 Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.