

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1021-MWD-E **TCEQ ID:** RN101612893 **CASE NO.:** 39919

RESPONDENT NAME: City of Port Lavaca

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Port Lavaca wastewater treatment system, located at the southeast corner of the intersection of Newlin Street and Commerce Street in Port Lavaca, approximately 1.4 miles northeast from the intersection of State Highway 35 and United States Highway 87, Calhoun County</p> <p>TYPE OF OPERATION: Wastewater treatment system</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 December 20, 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. Jordan Jones, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2569; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Jack Whitlow, Mayor, City of Port Lavaca, 202 North Virginia, Port Lavaca, Texas 77979 Respondent's Attorney: Mr. Brad Castleberry, Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 19, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 18, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>Failed to comply with permitted effluent limits for total copper [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010251001, Final Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$19,950</p> <p>Total Deferred: \$3,990 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$15,960</p> <p>Total Paid to General Revenue: \$0</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</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 60 days after the effective date of this Agreed Order, prepare and submit a work plan to implement a water effects ratio study in support of an amendment to TPDES Permit No. WQ0010251001;</p> <p>b. Within 270 days after the effective date of this Agreed Order, complete the study and submit a copy of same to the Office of Permitting and Registration;</p> <p>c. Within 365 days after the effective date of this Agreed Order, prepare and file an application to amend TPDES Permit No. WQ0010251001;</p> <p>d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the study and permit application in Ordering Provision a., b., and c., within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>e. Within 730 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010251001, including copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0010251001

Attachment A
Docket Number: 2010-1021-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Port Lavaca

Payable Penalty Amount: Fifteen Thousand Nine Hundred Sixty Dollars
(\$15,960)

SEP Amount: Fifteen Thousand Nine Hundred Sixty Dollars
(\$15,960)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and
Development Areas, Inc. ("RC&D")- Water or
Wastewater Treatment Assistance

Location of SEP: Calhoun County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Water or Wastewater Treatment Assistance Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 507
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division 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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	22-Jun-2010	Screening	22-Jun-2010	EPA Due	5-Sep-2010
	PCW	23-Jun-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Port Lavaca
Reg. Ent. Ref. No.	RN101612893
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	39919	No. of Violations	1
Docket No.	2010-1021-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jordan Jones
		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	\$15,000
---	-------------------	----------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	33.0% Enhancement	Subtotals 2, 3, & 7	\$4,950
---------------------------	-------------------	--------------------------------	---------

Notes An enhancement is recommended for five self-reported effluent violations and four NOV's with dissimilar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$864
 Approx. Cost of Compliance \$10,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$19,950
-----------------------------	-----------------------	----------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$19,950
-----------------------------	----------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$19,950
-----------------------------------	-------------------------------	----------

DEFERRAL	20.0% Reduction	Adjustment	-\$3,990
-----------------	-----------------	-------------------	----------

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

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY	\$15,960
------------------------	----------

Screening Date 22-Jun-2010

Docket No. 2010-1021-MWD-E

PCW

Respondent City of Port Lavaca

Policy Revision 2 (September 2002)

Case ID No. 39919

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612893

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

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)	5	25%
	Other written NOVs	4	8%
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) 33%

>> 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

An enhancement is recommended for five self-reported effluent violations and four NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 33%

Screening Date 22-Jun-2010

Docket No. 2010-1021-MWD-E

PCW

Respondent City of Port Lavaca

Policy Revision 2 (September 2002)

Case ID No. 39919

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612893

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010251001, Final Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented in a record review conducted on May 19, 2010. See attached Effluent Limit-Violation Table

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate total copper to determine whether the discharged amount of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3

90 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Three monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement

Ordinary

N/A

X (mark with x)

Notes

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$664

Violation Final Penalty Total \$19,950

This violation Final Assessed Penalty (adjusted for limits) \$19,950

Economic Benefit Worksheet

Respondent City of Port Lavaca
Case ID No. 39919
Reg. Ent. Reference No. RN101612893
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$10,000	31-Dec-2009	30-Apr-2011	1.33	\$664	n/a	\$664

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater treatment system. Date required is the month the first non-compliant excursion was documented. 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

\$10,000

TOTAL

\$664

Effluent Limit Violation Table

Respondent	City of Port Lavaca
ID Number(s)	TPDES Permit No. WQ0010251001, Case No. 39919
Docker Number	2010-1021-MWD-E
Env. Coordinator	Jordan Jones
Corresponds to Violation Number:	1

**EFFLUENT PARAMETER
Permit Limit**

EFFLUENT PARAMETER	Total Copper Daily Avg. Conc.	Total Copper Daily Max. Conc.	Total Copper Daily Avg. Loading
<i>Permit Limit</i>	Limit = 4.43 µg/L	Limit = 9.38 µg/L	Limit = 0.074 lbs/day
December 31, 2009	15.8	19	c
January 31, 2010	17	35	0.1085
February 28, 2010	20.25	29	0.1369
	conc. = concentration µg/L = micrograms per liter	max. = maximum lbs/day = pounds per day	avg. = average

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600755052	City of Port Lavaca	Classification: AVERAGE	Rating: 1.24
Regulated Entity:	RN101612893	CITY OF PORT LAVACA	Classification: AVERAGE	Site Rating: 0.73
ID Number(s):	WASTEWATER	PERMIT	WQ0010251001	
	WASTEWATER	PERMIT	TPDES0047562	
	WASTEWATER	PERMIT	TX0047562	
	WASTEWATER LICENSING	LICENSE	WQ0010251001	
Location:	LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NEWLIN STREET AND COMMERCE STREET IN THE CITY OF PORT LAVACA, APPROXIMATELY 1.4 MILES NORTHEAST FROM THE INTERSECTION OF STATE HIGHWAY 35 AND U.S. HIGHWAY 87 IN CALHOUN COUNTY, TEXAS			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	June 22, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 22, 2005 to June 22, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jordan Jones		Phone:	512-239-2569

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: 9/1/2009 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	06/24/2005	(580765)
2	08/23/2005	(580775)
3	08/26/2005	(580771)
4	09/01/2005	(418670)
5	09/16/2005	(580773)
6	11/21/2005	(580777)
7	12/19/2005	(580779)
8	01/20/2006	(580781)
9	03/13/2006	(580756)
10	03/21/2006	(580758)
11	05/18/2006	(580780)
12	05/18/2006	(580763)
13	06/23/2006	(580766)
14	07/25/2006	(580769)
15	08/09/2006	(580782)
16	08/31/2006	(580772)
17	09/22/2006	(580774)
18	10/23/2006	(580776)
19	11/20/2006	(517787)
20	11/20/2006	(580778)
21	12/22/2006	(580780)
22	02/22/2007	(580757)

23	03/01/2007	(542050)
24	03/19/2007	(580759)
25	03/23/2007	(580761)
26	05/21/2007	(580764)
27	06/19/2007	(580770)
28	06/26/2007	(580767)
29	07/02/2007	(563522)
30	08/05/2007	(608064)
31	09/14/2007	(608065)
32	09/14/2007	(608066)
33	09/14/2007	(608067)
34	11/23/2007	(729010)
35	01/02/2008	(729012)
36	02/19/2008	(729001)
37	03/24/2008	(729002)
38	04/24/2008	(729003)
39	05/21/2008	(729004)
40	06/09/2008	(729006)
41	06/19/2008	(729005)
42	08/20/2008	(729007)
43	09/29/2008	(729008)
44	10/13/2008	(729009)
45	11/19/2008	(706789)
46	11/19/2008	(729014)
47	11/20/2008	(729011)
48	12/22/2008	(729013)
49	01/30/2009	(725333)
50	04/03/2009	(740868)
51	04/20/2009	(769877)
52	05/08/2009	(769876)
53	05/11/2009	(769875)
54	05/21/2009	(769878)
55	06/04/2009	(747587)
56	06/22/2009	(809175)
57	08/13/2009	(809179)
58	08/24/2009	(809177)
59	09/22/2009	(809178)
60	11/16/2009	(809180)
61	12/07/2009	(809176)
62	12/28/2009	(809181)
63	01/25/2010	(809182)
64	02/25/2010	(809174)
65	06/18/2010	(803510)

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

Date: 06/30/2006 (580769) CN600755052
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
 Date: 11/20/2006 (517787) CN600755052
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.3
 Operational Requirements 1. OP

Description: Failure to at times ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Sludge Prov. Sect. III. G. (page 22) PERMIT
 Description: Failure to report annually to the TCEQ Regional Office (MC Region 14) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1, of each year, the information listed in TPDES Permit WQ0010251-001, Sludge Provisions, Section III. G. Reporting Requirements 1-9.

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.4(b)(4)		
Description:	Failure to provide suitable containers with lids for holding screenings.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.6(c)(2)(H)(ii)		
Description:	Failure to provide at least one uninstalled UV module.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.6(c)(2)(E)		
Description:	Failure to provide lamp failure alarms for a predetermined number of lamp failures.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) OTHER REQUIREMENTS 7. (page 23) PERMIT		
Description:	Failure to notify the TCEQ Regional Office (MC Region 14) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division in writing that the permittee has achieved compliance with the final permitted effluent limitations required on Page 2b of the permit within 14 days of the compliance date.		
Date	06/30/2007 (580770)	CN600755052	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	07/02/2007 (563522)	CN600755052	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.3 Operational Requirements 1. OP		
Description:	Failure to at times ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.6(c)(2)(E)		
Description:	Failure to provide lamp failure alarms for a predetermined number of lamp failures.		
Date	11/19/2008 (706789)	CN600755052	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.3 Operational Requirements 1. OP		
Description:	Failure to at times ensure that the facility and all of its systems of collection, treatment and disposal are properly operated and maintained.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.6(c)(2)(E)		
Description:	Failure to provide lamp failure alarms for a predetermined number of lamp failures.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) Part II. Section C. 3. PERMIT		
Description:	Failure to develop and implement a storm water pollution prevention plan (SWP3) according to the requirements of this permit before submitting an NOI for permit coverage.		
Date	01/30/2009 (725333)	CN600755052	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) Part II. Section C. 3. PERMIT		
Description:	Failure to develop and implement a storm water pollution prevention plan (SWP3) according to the requirements of this permit before submitting an NOI for permit coverage.		
Date	12/31/2009 (809182)	CN600755052	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	01/31/2010 (809174)	CN600755052	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

Date 02/28/2010

CN600755052

Self Report? YES

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.123(1)

Description: Failure to meet the limit for one or more permit parameter

- 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
- K. Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF PORT LAVACA
RN101612893

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-1021-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Port Lavaca ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Brad Castleberry of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment system located at the southeast corner of the intersection of Newlin Street and Commerce Street in Port Lavaca, approximately 1.4 miles northeast from the intersection of State Highway 35 and United States Highway 87 in Calhoun County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 23, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nineteen Thousand Nine Hundred Fifty Dollars (\$19,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Three Thousand Nine Hundred Ninety Dollars (\$3,990) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Fifteen Thousand Nine Hundred Sixty Dollars (\$15,960) shall be conditionally offset by the Respondent'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 Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010251001, Final Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on May 19, 2010 and shown in the table below.

EFFLUENT PARAMETER	Total Copper Daily Avg. Conc.	Total Copper Daily Max. Conc.	Total Copper Daily Avg. Loading
Permit Limit	Limit = 4.43 µg/L	Limit = 9.38 µg/L	Limit = 0.074 lbs/day
December 31, 2009	15.8	19	c
January 31, 2010	17	35	0.1065
February 28, 2010	20.25	29	0.1369
	conc. = concentration	max. = maximum	avg. = average
	µg/L = micrograms per liter	lbs/day = pounds per day	

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 Port Lavaca, Docket No. 2010-1021-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Fifteen Thousand Nine Hundred Sixty Dollars (\$15,960) 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. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Agreed Order, prepare and submit a work plan to implement a water effects ratio study (the "Study") in support of an amendment to TPDES Permit No. WQ0010251001 to:

Office of Permitting and Registration
Attention: Wastewater Permitting, MC 148
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- b. Within 270 days after the effective date of this Agreed Order, complete the Study and submit a copy of same to the Office of Permitting and Registration as identified herein;
 - c. Within 365 days after the effective date of this Agreed Order, prepare and file an application to amend TPDES Permit No. WQ0010251001, in accordance with 30 TEX. ADMIN. CODE ch. 305 to the Office of Permitting and Registration as identified herein;

- d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the Study and permit application in Ordering Provision Nos. 3.a., 3.b., and 3.c above, within 30 days after the date of such requests or by any other deadline specified in writing; and
- e. Within 730 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010251001, including copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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. If the Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 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.
7. 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.
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 Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Strain
For the Executive Director

11/22/2010
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.

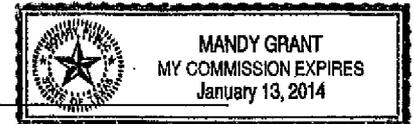
In addition, any falsification of any compliance documents may result in criminal prosecution.

Jack Whitlow
Signature

10-12-10
Date

Jack Whitlow
Name (Printed or typed)
Authorized Representative of
City of Port Lavaca

Mayor
Title



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

Attachment A
Docket Number: 2010-1021-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Port Lavaca

Payable Penalty Amount: Fifteen Thousand Nine Hundred Sixty Dollars
(\$15,960)

SEP Amount: Fifteen Thousand Nine Hundred Sixty Dollars
(\$15,960)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and
Development Areas, Inc. ("RC&D")- Water or
Wastewater Treatment Assistance

Location of SEP: Calhoun County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Water or Wastewater Treatment Assistance Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 507
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division 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

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.

