

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1316-EAQ-E **TCEQ ID:** RN105937932 **CASE NO.:** 40193
RESPONDENT NAME: City of San Marcos

ORDER TYPE:		
<input checked="" type="checkbox"/> 166o AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Craddock Avenue Extension, Craddock Avenue south of Farm-to-Market Road 3407, San Marcos, Hays County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 17, 2011. 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 169, (512) 239-2569; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Sabas Avila, Assistant Director of Public Services, City of San Marcos, 630 East Hopkins, San Marcos, Texas 78666 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 29, 2010</p> <p>Date of NOV/NOE Relating to this Case: August 2, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing construction on the 0.58 acre driveway prior to obtaining approval of a WPAP [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$3,750</p> <p>Total Deferred: \$750 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,000</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Compliance History Classification: Person/CN – Average Site/RN – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on August 2, 2010, the Respondent received approval of a WPAP.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Additional ID No(s): WPAP 11-10060101

Attachment A
Docket Number: 2010-1316-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of San Marcos
Payable Penalty Amount: Three Thousand Dollars (\$3,000)
SEP Amount: Three Thousand Dollars (\$3,000)
Type of SEP: Pre-approved
Third-Party Recipient: Hill Country Conservancy - Wenzel Tract Quarry -
Edwards Aquifer Recharge & Wetland Restoration
Location of SEP: Hays County

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

1. Project Description

A. Project

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

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

Performing Party shall use SEP Funds on the property to:

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

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

B. Environmental Benefit

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

C. Minimum Expenditure

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

2. Performance Schedule

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

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

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	9-Aug-2010	Screening	11-Aug-2010	EPA Due	
	PCW	12-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of San Marcos
Reg. Ent. Ref. No.	RN105937932
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40193	No. of Violations	1
Docket No.	2010-1316-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	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	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7 \$0

Notes: No adjustment for Compliance History.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$70	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$15,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Notes: Reduces or enhances the Final Subtotal by the indicated percentage.

Final Penalty Amount	\$3,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,750
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DEFERRAL	20.0% Reduction	Adjustment	-\$750
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Notes: Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)
Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,000
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Screening Date 11-Aug-2010

Docket No. 2010-1316-EAQ-E

PCW

Respondent City of San Marcos

Policy Revision 2 (September 2002)

Case ID No. 40193

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105937932

Media [Statute] Edwards Aquifer

Enf. Coordinator Jordan Jones

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

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

Screening Date 11-Aug-2010
Respondent City of San Marcos
Case ID No. 40193
Reg. Ent. Reference No. RN105937932
Media [Statute] Edwards Aquifer
Enf. Coordinator Jordan Jones

Docket No. 2010-1316-EAQ-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description
 Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing construction on the 0.58 acre driveway prior to obtaining approval of a WPAP.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 5 34 Number of violation days

mark only one with an x	daily	
	weekly	X
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Five weekly events are recommended from the investigation date (June 29, 2010) to the date of compliance (August 2, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes: The Respondent received approval for the WPAP on August 2, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$70

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent City of San Marcos
Case ID No. 40193
Reg. Ent. Reference No. RN105937932
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$15,000	29-Jun-2010	2-Aug-2010	0.09	\$70	n/a	\$70
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to prepare, submit the application, and obtain approval of an Edwards Aquifer WPAP. Date required is the date the violation was documented. Final date is the date the plan was approved.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

TOTAL

\$70

Compliance History Report

Customer/Respondent/Owner-Operator: CN600521272 City of San Marcos Classification: AVERAGE Rating: 3.74
Regulated Entity: RN105937932 CRADDOCK AVENUE EXTENSION Classification: AVERAGE BY Site Rating: 3.01
DEFAULT

ID Number(s): EDWARDS AQUIFER REGISTRATION 11-10060101
Location: EXTENSION OF CRADDOCK AVENUE SOUTH OF FARM-
TO-MARKET ROAD 3407, SAN MARCOS, HAYS COUNTY
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: August 12, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: August 12, 2005 to August 12, 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 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 08/02/2010 (829831)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- K. Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF SAN MARCOS
RN105937932**

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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1316-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of San Marcos ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a construction site at Craddock Avenue south of Farm-to-Market Road 3407 in San Marcos, Hays County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the 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 August 7, 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 Three Thousand Seven Hundred Fifty Dollars (\$3,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Seven Hundred Fifty Dollars (\$750) 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. Three Thousand Dollars (\$3,000) 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 recognizes that on August 2, 2010, the Respondent received approval of a Water Pollution Abatement Plan ("WPAP").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on June 29, 2010. Specifically, the investigator observed evidence of ongoing construction on the 0.58 acre driveway prior to obtaining approval of a WPAP.

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 San Marcos, Docket No. 2010-1316-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Three Thousand Dollars (\$3,000) 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 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 Site operations referenced in this Agreed Order.
4. 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.
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. 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.
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. 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 Sztein
For the Executive Director

12/16/2010
Date

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

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

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

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

[Signature]
Signature

11/5/10
Date

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

ASST. DIR. OF PUBLIC SERVICES
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: 2010-1316-EAQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of San Marcos
Payable Penalty Amount: Three Thousand Dollars (\$3,000)
SEP Amount: Three Thousand Dollars (\$3,000)
Type of SEP: Pre-approved
Third-Party Recipient: Hill Country Conservancy - Wenzel Tract Quarry -
Edwards Aquifer Recharge & Wetland Restoration
Location of SEP: Hays County

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

1. Project Description

A. Project

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

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

Performing Party shall use SEP Funds on the property to:

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

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

B. Environmental Benefit

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

C. Minimum Expenditure

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

2. Performance Schedule

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

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

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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