

**Executive Summary – Enforcement Matter – Case No. 41030**

**City of Kingsville**

**RN101612976**

**Docket No. 2011-0123-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

MWD

**Small Business:**

No

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

City of Kingsville 3.0 MGD Wastewater Treatment Plant, located at 2801 East Santa Gertrudis Road, approximately 2,640 feet east of United States Highway 77 on the south side of Farm-to-Market Road 2045, Kleberg County

**Type of Operation:**

Wastewater treatment facility with an associated storm water outfall

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** May 13, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,600

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

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

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

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

Payment Plan: N/A

**SEP Conditional Offset:** \$10,600

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc. -

Water or Wastewater Treatment Assistance

**Compliance History Classifications:**

Person/CN - Average

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41030**  
**City of Kingsville**  
**RN101612976**  
**Docket No. 2011-0123-MWD-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** November 7, 2010 and November 8, 2010

**Date(s) of NOE(s):** December 30, 2010

***Violation Information***

1. Failed to prevent unauthorized discharges. Specifically, unauthorized discharges occurred from a storm water outfall on November 7, 2010 into Tranquitas Creek at the end of Garcia Street (north of the intersection of Santa Gertudis and Tranquitas Creek) and continued on November 8, 2010 on the southwest side of the 14th street bridge over Tranquitas Creek. The discharges were the results of electrical repairs made to the lift station that caused the motors to the pump station to fail, which led to the broken wastewater line. Both discharges were from the same cause and from the same source. Approximately 5,000 gallons of wastewater were discharged from the locations, resulting in a fish kill [TEX. WATER CODE § 26.121 and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010696001 Permit Conditions 2.g.].
2. Failed to submit the noncompliance notification within 24 hours after the discharge occurred [TEX. WATER CODE § 26.039(b) and TPDES Permit No. WQ0010696001 Monitoring and Reporting Requirements 7.b.i.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. On November 7, 2010, placed three clamps on the sewer main, vacuumed sewage from the discharge location and returned the wastewater to the north plant and disposed the sewage at an authorized disposal site. Chlorine tablets were placed in the area of the overflow and a sixty foot section of ductile metal pipe was repaired;
2. On November 8, 2010, placed chlorine tablets in area of overflow, plugged sewer main, vacuumed the main line and manholes, and disposed of water at the north plant and sewage was disposed of at an authorized disposal site; and
3. On January 24, 2011, submitted the noncompliance notification for the unauthorized discharge and provided additional employee oversight and instructions to ensure that the noncompliance notifications are submitted timely.

**Technical Requirements:**

The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)

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***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

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

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

**Respondent:** The Honorable Sam R. Fugate, Mayor, City of Kingsville, P.O. Box 1458, Kingsville, Texas 78364

Mr. Carlos Yerena, City Manager, City of Kingsville, P.O. Box 1458, Kingsville, Texas 78364

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



**Attachment A**  
**Docket Number: 2011-0123-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Kingsville</b>
<b>Payable Penalty Amount:</b>	<b>Ten Thousand Six Hundred Dollars (\$10,600)</b>
<b>SEP Amount:</b>	<b>Ten Thousand Six Hundred Dollars (\$10,600)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Water or Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Kleberg County</b>

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.

City of Kingsville  
Agreed Order – Attachment A

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

TCEQ

DATES	Assigned	3-Jan-2011			
	PCW	20-Jan-2011	Screening	14-Jan-2011	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City of Kingsville
Reg. Ent. Ref. No.	RN101612976
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	41030	No. of Violations	2
Docket No.	2011-0123-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Cheryl Thompson
		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 **\$11,000**

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

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

**Compliance History** 20.0% Enhancement Subtotals 2, 3, & 7 **\$2,200**

Notes: Enhancement for one NOV with same/similar violations and three months of self-reported effluent 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 **\$2,600**

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

Total EB Amounts \$26  
Approx. Cost of Compliance \$17,032  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$10,600**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$10,600**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$10,600**

**DEFERRAL** 0.0% Reduction Adjustment **\$0**

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

Notes

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$10,600**

Screening Date 14-Jan-2011

Docket No. 2011-0123-MWD-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 41030

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612976

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

### 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> )	4	20%
	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) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations and three months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 14-Jan-2011

Docket No. 2011-0123-MWD-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 41030

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612976

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121 and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010696001 Permit Conditions 2.g.

Violation Description Failed to prevent an unauthorized discharge. Specifically, unauthorized discharges occurred from a storm water outfall on November 7, 2010 into Tranquitas Creek at the end of Garcia Street (north of the intersection of Santa Gertudis and Tranquitas Creek) and continued on November 8, 2010 on the southwest side of the 14th street bridge over Tranquitas Creek. The discharges were the results of electrical repairs made to the lift station that caused the motors to the pump station to fail, which led to the broken wastewater line. Both discharges were from the same cause and from the same source. Approximately 5,000 gallons of wastewater were discharged from the locations, resulting in a fish kill.

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 Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2

2 Number of violation days

daily	X
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

Two daily events are recommended (1 event per location) for the discharges that occurred on November 7, 2010.

Good Faith Efforts to Comply

25.0% Reduction

\$2,500

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

Notes The Respondent returned to compliance on November 8, 2010.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$9,500

This violation Final Assessed Penalty (adjusted for limits) \$9,500

# Economic Benefit Worksheet

**Respondent:** City of Kingsville  
**Case ID No.:** 41030  
**Reg. Ent. Reference No.:** RN101612976  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$16,812	7-Nov-2010	8-Nov-2010	0.00	\$2	n/a	\$2

**Notes for DELAYED costs:** Actual cost to repair a sixty foot section of the metal pipe and to plug the sewer main, to clean and disinfect the area with chlorine tablets, to vacuum the creek and manholes located near discharge sites, and dispose of the dead fish. Date required is the date of the unauthorized discharge. Final Date is the date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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**      \$16,812      **TOTAL**      \$2

Screening Date 14-Jan-2011

Docket No. 2011-0123-MWD-E

PCW

Respondent City of Kingsville

Policy Revision 2 (September 2002)

Case ID No. 41030

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612976

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.039(b) and TPDES Permit No. WQ0010696001 Monitoring and Reporting Requirements 7.b.i.

Violation Description

Failed to submit noncompliance notifications to the TCEQ regional office within 24 hours of unauthorized discharges. Specifically, the Respondent did not submit a noncompliance notification for the discharge that occurred on the southwest side of the 14th Street bridge over Tranquitas Creek on November 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		X			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 .77 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$100

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent returned to compliance on January 24, 2011.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

# Economic Benefit Worksheet

**Respondent** City of Kingsville  
**Case ID No.** 41030  
**Reg. Ent. Reference No.** RN101612976  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
 Item Description 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	\$200	9-Nov-2010	24-Jan-2011	0.21	\$2	\$2
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to train staff on proper reporting procedures. Date required is the date the noncompliance report was due. Final date is the date of compliance.

**Avoided Costs**

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

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)	\$20	9-Nov-2010	24-Jan-2011	1.13	\$1	\$21

Notes for AVOIDED costs

Estimated cost to submit the noncompliance report to the TCEQ Regional office within 24 hours of the November 8, 2010 discharge. Date required is the date the noncompliance report was due. Final date is the date of compliance.

Approx. Cost of Compliance

\$220

**TOTAL**

\$23



19	10/17/2007	(607808)
20	02/08/2008	(611318)
21	07/08/2008	(685168)
22	05/08/2009	(744267)
23	11/04/2009	(780575)
24	02/13/2008	(806381)
25	02/23/2009	(806382)
26	03/23/2009	(806383)
27	03/12/2008	(806384)
28	04/19/2006	(806385)
29	04/16/2008	(806386)
30	04/24/2009	(806387)
31	05/15/2008	(806388)
32	05/21/2009	(806389)
33	06/13/2008	(806390)
34	06/19/2009	(806391)
35	07/16/2008	(806392)
36	07/22/2009	(806393)
37	08/18/2008	(806394)
38	08/24/2009	(806395)
39	09/20/2006	(806396)
40	09/19/2007	(806397)
41	09/18/2008	(806398)
42	09/21/2009	(806399)
43	10/16/2008	(806400)
44	10/26/2009	(806401)
45	11/21/2007	(806402)
46	11/19/2008	(806403)
47	12/26/2007	(806404)
48	12/17/2008	(806405)
49	01/22/2008	(806406)
50	01/20/2009	(806407)
51	06/01/2010	(831490)
52	06/01/2010	(831491)
53	06/14/2010	(831492)
54	06/14/2010	(831493)
55	06/01/2010	(831494)
56	06/01/2010	(831495)
57	06/01/2010	(831496)
58	09/22/2010	(874103)
59	11/23/2010	(877313)
60	12/30/2010	(879718)
61	10/22/2010	(881716)

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

Date: 06/30/2006 (577432) CN600674246

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 08/31/2009 (806399) CN600674246

Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter  
Date 09/30/2010 (881716) CN600674246

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	11/23/2010	(877313)	CN600674246
Self Report?	NO	Classification:	Minor
Citation:	TPDES PERMIT NO. 10696-001 PERMIT TWC Chapter 26 26.121		
Description:	Failure to prevent the discharge of wastewater into or adjacent to waters of the State.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a) TPDES PERMIT NO. 10696-001 PERMIT		
Description:	Failure to include the time of sample collection in records of monitoring activities.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.6 30 TAC Chapter 319, SubChapter A 319.9(c) TPDES PERMIT NO. 10696-001 PERMIT		
Description:	Failure to accurately analyze effluent samples in a manner representative of the monitored activity..		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) Operational Requirements; No. 1, Pg. 9 PERMIT		
Description:	Failure to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(12) 30 TAC Chapter 319, SubChapter A 319.1 Monitor & Report Req.; No. 7.d., Pg. 6 PERMIT		
Description:	Failure to accurately report information on the Discharge Monitoring Reports (DMRs).		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KINGSVILLE  
RN101612976**

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

## **AGREED ORDER DOCKET NO. 2011-0123-MWD-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 the City of Kingsville ("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 presented this agreement to the Commission.

The Respondent understands that they 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 a wastewater treatment facility with an associated storm water outfall located at 2801 East Santa Gertrudis Road, approximately 2,640 feet east of United States Highway 77 on the south side of Farm-to-Market Road 2045, Kleberg 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. During investigations conducted on November 7, 2010 and November 8, 2010, TCEQ staff documented unauthorized discharges from the storm water outfall. Specifically, unauthorized discharges occurred from a storm water outfall on November 7, 2010 into Tranquitas Creek at the end of Garcia Street (north of the intersection of Santa Gertudis and Tranquitas Creek) and continued on November 8, 2010 on the southwest side of the 14th street bridge over Tranquitas Creek. The discharges were the results of repairs made to the electrical service line to the lift station that caused the pumps to run backwards which caused sewer to backflow, which led to the broken wastewater line. Both discharges were from the same cause and from the same source. Approximately 5,000 gallons of wastewater were discharged from the locations, resulting in a fish kill.
4. During an investigation on November 8, 2010, TCEQ staff documented that the Respondent failed to submit a noncompliance notification to the TCEQ regional office within 24 hours of unauthorized discharges. Specifically, the Respondent did not submit a noncompliance notification for the discharge that occurred on the southwest side of the 14th Street bridge over Tranquitas Creek.
5. The Respondent received notice of the violations on January 5, 2011.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. On November 7, 2010, placed three clamps on the sewer main, vacuumed sewage from the discharge location and returned the wastewater to the north plant and disposed the sewage at an authorized disposal site. Chlorine tablets were placed in the area of the overflow and a sixty foot section of ductile metal pipe was repaired;
  - b. On November 8, 2010, placed chlorine tablets in area of overflow, plugged sewer main, vacuumed the main line and manholes, and disposed of water at the north plant and sewage was disposed of at an authorized disposal site; and
  - c. On January 24, 2011, submitted the noncompliance notification for the unauthorized discharge and provided additional employee oversight and instructions to ensure that the noncompliance notifications are submitted timely.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent unauthorized discharges, in violation of TEX. WATER CODE § 26.121 and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010696001 Permit Conditions 2.g.

3. As evidenced by Findings of Fact No. 4, the Respondent failed to submit the noncompliance notification within 24 hours after the discharge occurred, in violation of TEX. WATER CODE § 26.039(b) and TPDES Permit No. WQ0010696001 Monitoring and Reporting Requirements 7.b.i.
4. Pursuant to TEX. WATER CODE § 7.051, 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.
5. An administrative penalty in the amount of Ten Thousand Six Hundred Dollars (\$10,600) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX WATER CODE § 7.053. Ten Thousand Six Hundred Dollars (\$10,600) shall be conditionally offset by Respondent's completion of a 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 Ten Thousand Six Hundred Dollars (\$10,600) as set forth in Section II, Paragraph 5 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: City of Kingsville, Docket No. 2011-0123-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 Conclusions of Law Section II, Paragraph 5 section that describes the penalty and SEP above, Ten Thousand Six Hundred Dollars (\$10,600) 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 Facility 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. 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

  
For the Executive Director

5/20/2011  
Date

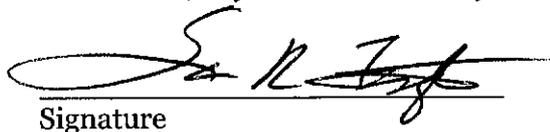
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Kingsville. I am authorized to agree to the attached Agreed Order on behalf of the City of Kingsville, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting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

I understand that by entering into this Agreed Order, the City of Kingsville 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.

  
Signature

4/01/11  
Date

Sam R. Fugate  
Name (Printed or typed)  
Authorized Representative of  
City of Kingsville

Mayor  
Title

**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: 2011-0123-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Kingsville</b>
<b>Payable Penalty Amount:</b>	<b>Ten Thousand Six Hundred Dollars (\$10,600)</b>
<b>SEP Amount:</b>	<b>Ten Thousand Six Hundred Dollars (\$10,600)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Water or Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Kleberg County</b>

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.

City of Kingsville  
Agreed Order - Attachment A

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.

