

Executive Summary – Enforcement Matter – Case No. 41182
City of Austin
RN100215052
Docket No. 2011-0276-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

No

Location(s) Where Violation(s) Occurred:

Sand Hill Energy Center, 13005 Fallwell Lane, Del Valle, Travis County

Type of Operation:

Power generation plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 20, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,875

Amount Deferred for Expedited Settlement: \$375

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: \$1,500

Name of SEP: Austin Parks Foundation - Restoration and Rehabilitation of the Barton
Springs Bypass Tunnel

Compliance History Classifications:

Person/CN - Average

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41182
City of Austin
RN100215052
Docket No. 2011-0276-AIR-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: December 14, 2010
Date(s) of NOE(s): February 14, 2011

Violation Information

Failed to adhere to the permitted allowable limit for particulate matter less than 10 microns in aerodynamic diameter (“PM10”). Specifically, the permitted allowable limit for PM10 is 4.0 pounds per hour (“lbs/hr”) and the results of a stack test conducted on August 9, 2010 showed the actual rate to be 6.37 lbs/hr for PM10 for Emission Point Number SH6, resulting in the release of approximately 3,356 pounds of PM10 [30 TEX. ADMIN. CODE §§ 101.20(3) and 116.115(b)(2)(F), TEX. HEALTH & SAFETY CODE § 382.085(b) and New Source Review Permit Nos. 48106 and PSD-TX-1012M1 Maximum Allowable Emission Rates Table].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on October 7, 2010, the Respondent completed an additional stack test which showed the actual rate PM10 to be 2.19 lbs/hr.

Technical Requirements:

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

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: Allison Fischer, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-2574; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
TCEQ SEP Coordinator: Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732
Respondent: Kathleen Garrett, Director of Environmental Care & Protection, City of Austin, 721 Barton Springs Road, Austin, Texas 78704

Executive Summary – Enforcement Matter – Case No. 41182
City of Austin
RN100215052
Docket No. 2011-0276-AIR-E

Ravi Joseph, Environmental Engineer, City of Austin, 721 Barton Springs Road, Austin,
Texas 78704

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Feb-2011	Screening	17-Feb-2011	EPA Due	8-Nov-2011
	PCW	22-Feb-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Austin				
Reg. Ent. Ref. No.	RN100215052				
Facility/Site Region	11-Austin	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	41182	No. of Violations	1
Docket No.	2011-0276-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Allison Fischer
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,500**

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: Enhancement for one NOV with dissimilar violations. The Respondent participated in a voluntary pollution reduction program; however, because a reduction would be below zero, the enhancement defaults to zero.

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** **\$625**

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

Total EB Amounts **\$24**
 Approx. Cost of Compliance **\$3,000**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,875**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$1,875**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,875**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$375**

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 **\$1,500**

Screening Date 17-Feb-2011

Docket No. 2011-0276-AIR-E

PCW

Respondent City of Austin

Policy Revision 2 (September 2002)

Case ID No. 41182

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100215052

Media [Statute] Air

Enf. Coordinator Allison Fischer

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	1	2%
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	Yes	-5%
	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

Enhancement for one NOV with dissimilar violations. The Respondent participated in a voluntary pollution reduction program; however, because a reduction would be below zero, the enhancement defaults to zero.

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

Screening Date 17-Feb-2011

Docket No. 2011-0276-AIR-E

PCW

Respondent City of Austin

Policy Revision 2 (September 2002)

Case ID No. 41182

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100215052

Media [Statute] Air

Enf. Coordinator Allison Fischer

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 101.20(3) and 116.115(b)(2)(F), Tex. Health & Safety Code § 382.085(b) and New Source Review Permit Nos. 48106 and PSD-TX-1012M1 Maximum Allowable Emission Rates Table

Violation Description

Failed to adhere to the permitted allowable limit for particulate matter less than 10 microns in aerodynamic diameter ("PM10"). Specifically, the permitted allowable limit for PM10 is 4.0 pounds per hour ("lbs/hr") and the results of a stack test conducted on August 9, 2010 showed the actual rate to be 6.37 lbs/hr for PM10 for Emission Point Number SH6, resulting in the release of approximately 3,356 pounds of PM10.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

59 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the date of the stack test, August 9, 2010 to the date of compliance, October 7, 2010.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent returned to compliance on October 7, 2010 and the NOE is dated February 14, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,875

This violation Final Assessed Penalty (adjusted for limits) \$1,875

Economic Benefit Worksheet

Respondent City of Austin
Case ID No. 41182
Req. Ent. Reference No. RN100215052
Media Air
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 \$						

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$3,000	9-Aug-2010	7-Oct-2010	0.16	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost for conducting accurate stack testing to demonstrate compliance with emission limits. The date required is the non-compliant test date. The final date is the date compliance was demonstrated.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$3,000

TOTAL

\$24

Compliance History

Customer/Respondent/Owner-Operator:	CN600135198	City of Austin	Classification: AVERAGE	Rating: 2.96
Regulated Entity:	RN100215052	SAND HILL ENERGY CENTER	Classification: HIGH	Site Rating: 0.05 TH0760E
ID Number(s):	AIR OPERATING PERMITS AIR OPERATING PERMITS INDUSTRIAL AND HAZARDOUS WASTE INDUSTRIAL AND HAZARDOUS WASTE WASTEWATER WASTEWATER AIR NEW SOURCE PERMITS AIR NEW SOURCE PERMITS STORMWATER STORMWATER STORMWATER AIR EMISSIONS INVENTORY		ACCOUNT NUMBER PERMIT EPA ID SOLID WASTE REGISTRATION # (SWR) PERMIT EPA ID AFS NUM PERMIT EPA ID ACCOUNT NUMBER REGISTRATION EPA ID PERMIT PERMIT PERMIT ACCOUNT NUMBER	2393 TXR000043984 86737 WQ0004351000 TX0124362 4845300343 48106 PSDTX1012 TH0760E 91832 PSDTX1012M1 TXR150430 TXR05T953 TXR15NA27 TH0760E
Location:	13005 FALLWELL LN, DEL VALLE, TX, 78617			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 14, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 17, 2006 to February 17, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Allison Fischer	Phone:	(512) 239 – 2574	

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? Yes
3. If Yes, who is the current owner/operator?

OPR	Laughlin-Thyssen, Ltd.
OWNOPR	City of Austin
OPR	TIC - The Industrial Company
OWNOPR	City of Austin
OWNOPR	City of Austin Electric Utility Department
OPR	Austin Commercial, L. P.
4. If Yes, who was/were the prior owner(s)/operator(s)? OPR City of Austin
5. When did the change(s) in owner or operator occur? 09/18/2009 OPR City of Austin
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	03/20/2006	(493532)
2	04/19/2006	(506822)
3	05/18/2006	(506823)
4	06/16/2006	(506824)
5	07/18/2006	(506825)
6	08/17/2006	(528980)
7	09/14/2006	(528981)
8	10/18/2006	(528982)
9	02/15/2007	(552090)
10	11/09/2006	(552091)
11	12/12/2006	(552092)

12 01/19/2007 (552093)
 13 08/31/2007 (572679)
 14 03/14/2007 (589545)
 15 04/19/2007 (589546)
 16 05/16/2007 (589547)
 17 06/14/2007 (589548)
 18 07/16/2007 (589549)
 19 08/13/2007 (589550)
 20 09/13/2007 (605921)
 21 10/10/2007 (605922)
 22 10/10/2007 (605923)
 23 11/20/2007 (633000)
 24 12/17/2007 (633001)
 25 02/15/2008 (677692)
 26 03/18/2008 (677693)
 27 04/15/2008 (677694)
 28 07/10/2008 (685715)
 29 05/15/2008 (696467)
 30 06/17/2008 (696468)
 31 07/16/2008 (696469)
 32 08/15/2008 (718151)
 33 09/18/2008 (718152)
 34 10/17/2008 (718153)
 35 11/13/2008 (733415)
 36 12/15/2008 (733416)
 37 01/14/2009 (733417)
 38 02/11/2009 (756564)
 39 03/13/2009 (756565)
 40 04/14/2009 (756566)
 41 08/20/2009 (766216)
 42 05/18/2009 (773472)
 43 06/11/2009 (773473)
 44 12/10/2009 (783259)
 45 08/16/2010 (800877)
 46 02/11/2010 (820685)
 47 12/15/2009 (820686)
 48 01/14/2010 (820687)
 49 03/16/2010 (836513)
 50 04/14/2010 (836514)
 51 05/19/2010 (836515)
 52 06/14/2010 (847993)
 53 07/14/2010 (862431)
 54 08/11/2010 (869051)
 55 09/15/2010 (875909)
 56 10/18/2010 (883491)
 57 02/11/2011 (884749)
 58 11/17/2010 (889873)
 59 12/17/2010 (898275)
 60 01/19/2011 (904133)

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

Date: 01/31/2008 (677692) CN600135198
 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

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.

Type	Tier	Certification Date
CLEAN TEXAS PROGRAM	PARTNER	07/19/2008
CLEAN TEXAS PROGRAM	PARTNER	07/19/2008
CLEAN TEXAS PROGRAM	PARTNER	07/19/2008
CLEAN TEXAS PROGRAM	PARTNER	07/19/2008
CLEAN TEXAS PROGRAM	PARTNERSHIP	07/19/2008
CLEAN TEXAS PROGRAM	PARTNERSHIP	07/19/2008

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 AUSTIN
RN100215052**

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

AGREED ORDER DOCKET NO. 2011-0276-AIR-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 Austin ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. 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 power generation plant at 13005 Fallwell Lane in Del Valle, Travis County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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 February 19, 2011.
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 One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Three Hundred Seventy-Five Dollars (\$375) 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. One Thousand Five Hundred Dollars (\$1,500) 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 October 7, 2010, the Respondent completed an additional stack test which showed the actual rate for particulate matter less than 10 microns in aerodynamic diameter ("PM10") to be 2.19 pounds per hour ("lbs/hr").
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 Plant, the Respondent is alleged to have failed to adhere to the permitted allowable limit for PM10, in violation of 30 TEX. ADMIN. CODE §§ 101.20(3) and 116.115(b)(2)(F), TEX. HEALTH & SAFETY CODE § 382.085(b) and New Source Review Permit Nos. 48106 and PSD-TX-1012M1 Maximum Allowable Emission Rates Table, as documented during a record review conducted on December 14, 2010. Specifically, the permitted allowable limit for PM10 is 4.0 lbs/hr and the results of a stack test conducted on August 9, 2010 showed the actual rate to be 6.37 lbs/hr for PM10 for Emission Point Number SH6, resulting in the release of approximately 3,356 pounds of PM10.

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 Austin, Docket No. 2011-0276-AIR-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 above, One Thousand Five Hundred Dollars (\$1,500) 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 Plant 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 Szellin
For the Executive Director

6/8/2011
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.

Kathleen Garrett
Signature

4/20/11
Date

Kathleen Garrett
Name (Printed or typed)
Authorized Representative of
City of Austin

Dir. Env. Care & Protection
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: 2011-0276-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Austin

Penalty Amount: One Thousand Five Hundred Dollars (\$1,500)

SEP Offset Amount: One Thousand Five Hundred Dollars (\$1,500)

Type of SEP: Pre-approved

Third-Party Recipient: Austin Parks Foundation

Project Name: Restoration and Rehabilitation of the Barton Springs Bypass Tunnel

Location of SEP: Bastrop, Blanco, Burnett, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson Counties

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

1. Project Description

A. Project

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to the **Austin Parks Foundation** for the *Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel*. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the “Project”). The deteriorated condition of the Barton Springs Pool Bypass tunnel results in a significant increase of pollutants from urban runoff into the pool. Specifically, this SEP will restore and rehabilitate the Barton Springs Pool bypass tunnel inlet grate and outlet valve by providing funds for the engineering design, materials and construction activities to repair the tunnel.

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

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

City of Austin
Agreed Order - Attachment A

B. Environmental Benefit

This Project benefits water quality by reducing the amount of pollutants reaching the environment.

C. Minimum Expenditure

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

2. Performance Schedule

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

Austin Parks Foundation
Charlie McCabe, Executive Director
816 Congress Avenue
Austin, Texas 78701

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

City of Austin
Agreed Order - Attachment A

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

Attachment A
Docket Number: 2011-0276-AIR-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Austin

Penalty Amount: One Thousand Five Hundred Dollars (\$1,500)

SEP Offset Amount: One Thousand Five Hundred Dollars (\$1,500)

Type of SEP: Pre-approved

Third-Party Recipient: Austin Parks Foundation

Project Name: Restoration and Rehabilitation of the Barton Springs Bypass Tunnel

Location of SEP: Bastrop, Blanco, Burnett, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson Counties

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

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City of Austin
Agreed Order - Attachment A

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