

Executive Summary – Enforcement Matter – Case No. 41857
Trinity Bay Conservation District
RN102077393
Docket No. 2011-0969-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Winnie-Stowell WWTP, located approximately 1.2 miles southeast of the intersection of State Highway 124 and Farm-to-Market Road 1406, approximately 0.7 mile east of State Highway 124 on Buccaneer Drive, Winnie, Chambers County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 21, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,925

Amount Deferred for Expedited Settlement: \$4,185

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: \$16,740

Name of SEP: Galveston Bay Foundation - Marsh Mania

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41857
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Docket No. 2011-0969-MWD-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 6, 2011
Date(s) of NOE(s): May 24, 2011

Violation Information

Failed to comply with permit effluent limits for 5-day carbonaceous biochemical oxygen demand, total suspended solids, and ammonia nitrogen [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010851001, Effluent Limitations and Monitoring Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)
2. The Order will also require the Respondent to, within 365 days, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010851001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

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: Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

Executive Summary – Enforcement Matter – Case No. 41857
Trinity Bay Conservation District
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Docket No. 2011-0969-MWD-E

Respondent: Jerry Shadden, Manager, Trinity Bay Conservation District, P.O. Box 580, Anahuac, Texas 77514

Respondent's Attorney: Guy Goodson, Germer Gertz L.L.P., 550 Fannin, Suite 400, Beaumont, Texas 77701

Attachment A
Docket Number: 2011-0969-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Trinity Bay Conservation District
Payable Penalty Amount:	Sixteen Thousand Seven Hundred Forty Dollars (\$16,740)
SEP Amount:	Sixteen Thousand Seven Hundred Forty Dollars (\$16,740)
Type of SEP:	Pre-approved
Third-Party Recipient:	Galveston Bay Foundation - "Marsh Mania"
Location of SEP:	Harris County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation "Marsh Mania" as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

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 providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

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:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

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

Trinity Bay Conservation District
Agreed Order – Attachment A

amount.

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

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

The Respondent shall also mail a copy of the check to the Enforcement Division 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

TCEQ

DATES	Assigned	31-May-2011	Screening	15-Jun-2011	EPA Due	
	PCW	15-Jun-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Trinity Bay Conservation District		
Reg. Ent. Ref. No.	RN102077393		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	41857	No. of Violations	1
Docket No.	2011-0969-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$7,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **179.0%** Enhancement **Subtotals 2, 3, & 7** **\$13,425**

Notes: Enhancement for 25 self-reported effluent violations, two NOVs with same/similar violations, two NOVs without same/similar violations, and two agreed orders with denial of liability.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts **\$19,274**
 Approx. Cost of Compliance **\$150,000**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$20,925**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$20,925**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$20,925**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$4,185**

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$16,740**

Screening Date 15-Jun-2011

Docket No. 2011-0969-MWD-E

PCW

Respondent Trinity Bay Conservation District

Policy Revision 2 (September 2002)

Case ID No. 41857

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102077393

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

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>)	27	135%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 179%

>> 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 25 self-reported effluent violations, two NOVs with same/similar violations, two NOVs without same/similar violations, and two agreed orders with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 179%

Screening Date 15-Jun-2011

Docket No. 2011-0969-MWD-E

PCW

Respondent Trinity Bay Conservation District

Policy Revision 2 (September 2002)

Case ID No. 41857

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102077393

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010851001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permit effluent limits, as documented during a record review conducted on May 6, 2011 and shown in the attached effluent violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

A simplified model was used to evaluate ammonia-nitrogen and carbonaceous biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids were also considered. As a result of these discharges, human health or the environment has been exposed to pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

151 Number of violation days

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

Violation Base Penalty \$7,500

Three quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19,274

Violation Final Penalty Total \$20,925

This violation Final Assessed Penalty (adjusted for limits) \$20,925

Economic Benefit Worksheet

Respondent Trinity Bay Conservation District
Case ID No. 41857
Req. Ent. Reference No. RN102077393
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$150,000	31-May-2010	31-Mar-2012	1.84	\$918	\$18,356	\$19,274
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of consultant fees, removal of nutria, and replacing plants in the wetland cells. Date required is the first noncompliant month and final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150,000

TOTAL

\$19,274

Respondent: Trinity Bay Conservation District
 TPDES Permit No. WQ0010851001
 Docket No. 2011-0969-MWD-E

Effluent Violation Table

<i>Effluent Parameter</i>	<i>Monitoring Period End Date</i>				
	May 2010	November 2010	December 2010	January 2011	February 2011
	Reported Value (mg/L)				
CBOD ₅ Daily Avg. Conc. Permit Limit = 10 mg/L	10.4	c	c	c	c
TSS Daily Avg. Conc. Permit Limit = 15 mg/L	c	c	18.5	c	c
TSS Daily Max. Conc. Permit Limit = 40 mg/L	c	44	41	c	c
Ammonia-Nitrogen Daily Avg. Conc. Permit Limit = 5 mg/L	c	c	6.2	8.1	9.0
Ammonia-Nitrogen Daily Max. Permit Limit = 10 mg/L	c	c	c	11.2	11.4

Conc.: concentration mg/L: milligrams per liter CBOD₅: five-day carbonaceous biochemical oxygen demand
 Avg: average TSS: total suspended solids c: compliant Max: maximum

Compliance History

Customer/Respondent/Owner-Operator: CN600675417 Trinity Bay Conservation District Classification: AVERAGE Rating: 1.35

Regulated Entity: RN102077393 WINNIE-STOWELL WWTP Classification: AVERAGE Site Rating: 3.83

ID Number(s): WASTEWATER PERMIT WQ0010851001
WASTEWATER EPA ID TX0020460
WASTEWATER LICENSING LICENSE WQ0010851001

Location: 1.2 mi. SE of intersec. of SH 124 & FM 1406, approx. 0.7 mi. E of SH 124 on Buccaneer Dr., Winnie, Chambers Co., Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 15, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 15, 2006 to June 15, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Merrilee Hupp Phone: (512) 239 - 4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 01/12/2008 ADMINORDER 2007-0822-MWD-E

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov Self-reporting Requirements PERMIT

Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

Effective Date: 12/18/2009

ADMINORDER 2009-0878-MWD-E

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

- 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. (CEEDS Inv. Track. No.)

1	07/11/2006	(484481)
2	06/30/2006	(498636)
3	08/29/2006	(520628)
4	02/12/2007	(534938)
5	09/25/2006	(545013)
6	10/25/2006	(545014)
7	11/27/2006	(545015)
8	12/29/2006	(545016)
9	02/27/2007	(545017)
10	01/19/2007	(553672)
11	05/17/2007	(558394)
12	02/28/2007	(576219)
13	03/22/2007	(576220)
14	04/16/2007	(576221)
15	05/14/2007	(576222)
16	06/15/2007	(576223)
17	04/11/2007	(576224)
18	04/12/2007	(576225)
19	08/29/2007	(607732)
20	08/29/2007	(607733)
21	10/08/2007	(619849)
22	12/03/2007	(619850)
23	12/28/2007	(619851)
24	07/23/2008	(646311)
25	02/25/2008	(672329)
26	03/26/2008	(672330)
27	04/17/2008	(690245)
28	05/27/2008	(690246)
29	06/16/2008	(690247)
30	06/09/2008	(690248)
31	06/02/2008	(690249)
32	10/03/2008	(711070)
33	12/19/2008	(721166)
34	10/02/2008	(727722)
35	11/20/2008	(727723)
36	12/19/2008	(727724)
37	12/08/2008	(727725)
38	05/22/2009	(742768)
39	03/16/2009	(750567)
40	03/18/2009	(750568)
41	03/18/2009	(750569)
42	01/12/2009	(750570)
43	03/03/2009	(805461)
44	02/24/2010	(805462)
45	06/02/2009	(805463)
46	06/17/2009	(805464)
47	09/28/2009	(805465)

48 09/24/2009 (805466)
 49 11/20/2009 (805467)
 50 01/28/2010 (805468)
 51 01/29/2010 (805469)
 52 10/20/2010 (825524)
 53 04/01/2010 (831163)
 54 04/19/2010 (831164)
 55 05/28/2010 (831165)
 56 06/23/2010 (846352)
 57 08/31/2010 (850268)
 58 03/24/2010 (860936)
 59 07/08/2010 (866927)
 60 10/12/2010 (873998)
 61 10/08/2010 (881602)
 62 01/05/2011 (896343)
 63 01/12/2011 (896344)
 64 10/08/2010 (902394)
 65 03/16/2011 (905182)
 66 02/24/2011 (909178)
 67 04/29/2011 (913395)
 68 05/24/2011 (915927)
 69 03/22/2011 (924983)
 70 04/21/2011 (924984)

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

Date: 08/31/2006 (545013) CN600675417
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 11/30/2006 (545016) CN600675417
 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: 12/31/2006 (545017) CN600675417
 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: 01/19/2007 (553672) CN600675417
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE
 Date: 01/31/2007 (576219) CN600675417
 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: 02/12/2007 (534938) CN600675417
 Self Report? NO Classification: Moderate
 Citation: 10851-001 PERMIT
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to properly operate and maintain the flow meter so that it accurately
 measures the effluent flow.
 Date: 12/31/2007 (607733) CN600675417

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 08/31/2008 (711070) CN600675417	
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 09/30/2008 (727722) CN600675417	
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 12/31/2008 (727725) CN600675417	
Self Report? YES	Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description: Failure to meet the limit for one or more permit parameter	
Date 01/31/2009 (805461) CN600675417	
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 03/31/2009 (750568) CN600675417	
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 04/30/2009 (805463) CN600675417	
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 05/31/2009 (805464) CN600675417	
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 06/30/2009 (750569) CN600675417	
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 08/31/2009 (805465) CN600675417	
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 09/30/2009 (805466) CN600675417	
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 10/31/2009 (805467) CN600675417	
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 11/30/2009 (805468) CN600675417	
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 12/31/2009 (805469) CN600675417

Self Report? YES Classification: Moderate

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

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

Date 01/31/2010 (805462) CN600675417

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 05/31/2010 (846352) CN600675417

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 07/02/2010 (828391) CN600675417

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
2D TWC Chapter 26, SubChapter A 26.121(a)(1)
2D TWC Chapter 26, SubChapter A 26.121(a)(3)
2D TWC Chapter 26, SubChapter A 26.121(b)
2D TWC Chapter 26, SubChapter A 26.121(c)
2D TWC Chapter 26, SubChapter A 26.121(d)
2D TWC Chapter 26, SubChapter A 26.121(e)
30 TAC Chapter 305, SubChapter F 305.125(4)
30 TAC Chapter 305, SubChapter F 305.125(5)
TWC Chapter 26 26.121
TWC Chapter 26 26.121(a)(2)

Description: Failure to prevent an unauthorized discharge from the collection system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)

Description: Failure to submit noncompliance notification within twenty four hours by phone or fax and written notification within five working days for the unauthorized discharge which occurred from the collection system.

Date 11/30/2010 (896344) CN600675417

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 12/31/2010 (902394) CN600675417

Self Report? YES Classification: Moderate

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

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

Date 01/31/2011 (909178) CN600675417

Self Report? YES Classification: Moderate

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

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

Date 02/28/2011 (924983) CN600675417

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 03/16/2011 (905182) CN600675417

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to provide the required documents for review.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
EL&MR PERMIT

Description: Failure to prevent the discharge of foam into the receiving stream.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.9(d)

Description: Failure to properly calibrate the pH meter.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 319, SubChapter A 319.11(a)
 Monitoring & Reporting Requirements PERMIT
 Description: Failure to properly collect fecal coliform samples.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(e)
 Description: Failure to accurately complete the discharge monitoring report (DMR).
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Monitoring & Reporting Requirements PERMIT
 Description: Failure to submit written noncompliance notification within the specified time as required.

Date 03/31/2011 (924984) CN600675417
 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.
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
TRINITY BAY CONSERVATION
DISTRICT
RN102077393

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2011-0969-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Trinity Bay Conservation District ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Guy Goodson of the law firm of Germer Gertz L.L.P., appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located approximately 1.2 miles southeast of the intersection of State Highway 124 and Farm-to-Market Road 1406, approximately 0.7 mile east of State Highway 124 on Buccaneer Drive in Winnie, Chambers County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 29, 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 Twenty Thousand Nine Hundred Twenty-Five Dollars (\$20,925) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Thousand One Hundred Eighty-Five Dollars (\$4,185) 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. Sixteen Thousand Seven Hundred Forty Dollars (\$16,740) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010851001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on May 6, 2011 and shown in the table below:

<i>Effluent Parameter</i>	<i>Monitoring Period End Date</i>				
	May 2010	November 2010	December 2010	January 2011	February 2011
	Reported Value (mg/L)				
CBOD ₅ Daily Avg. Conc. Permit Limit = 10 mg/L	10.4	c	c	c	c
TSS Daily Avg. Conc. Permit Limit = 15 mg/L	c	c	18.5	c	c
TSS Daily Max. Conc. Permit Limit = 40 mg/L	c	44	41	c	c
Ammonia-Nitrogen Daily Avg. Conc. Permit Limit = 5 mg/L	c	c	6.2	8.1	9.0
Ammonia-Nitrogen Daily Max. Permit Limit = 10 mg/L	c	c	c	11.2	11.4

Conc.: concentration mg/L: milligrams per liter CBOD₅: five-day carbonaceous biochemical oxygen demand
 Avg: average TSS: total suspended solids c: compliant Max: maximum

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: Trinity Bay Conservation District, Docket No. 2011-0969-MWD-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Sixteen Thousand Seven Hundred Forty Dollars (\$16,740) of the assessed administrative penalty shall be offset with the condition that Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement
3. It is further ordered that the Respondent shall, within 365 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010851001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

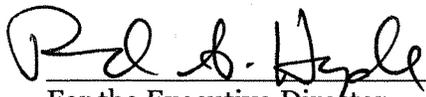
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, 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.
8. 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.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

11/3/11

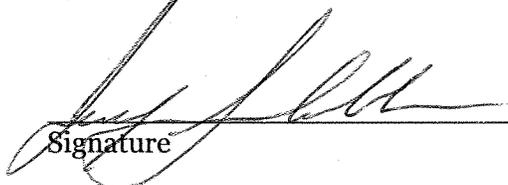
Date

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

9-6-11

Date

JERRY SHADDEN

Name (Printed or typed)
Authorized Representative of
Trinity Bay Conservation District

MANAGER

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: 2011-0969-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Trinity Bay Conservation District
Payable Penalty Amount:	Sixteen Thousand Seven Hundred Forty Dollars (\$16,740)
SEP Amount:	Sixteen Thousand Seven Hundred Forty Dollars (\$16,740)
Type of SEP:	Pre-approved
Third-Party Recipient:	Galveston Bay Foundation - "Marsh Mania"
Location of SEP:	Harris County

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

1. Project Description

A. Project

The Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Galveston Bay Foundation to be used for the Galveston Bay Foundation "Marsh Mania" as set forth in the agreement between the Third-Party Recipient and the TCEQ. SEP monies will be used to restore shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The high elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct costs of the implementation of the project, including material, equipment, and labor costs.

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 providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

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:

Mr. Bob Stokes, President
Galveston Bay Foundation
17330 Highway 3
Webster, Texas 77598

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

Trinity Bay Conservation District
Agreed Order - Attachment A

amount.

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

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

The Respondent shall also mail a copy of the check to the Enforcement Division 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.