

Executive Summary – Enforcement Matter – Case No. 41624
AQUA DEVELOPMENT, INC.
RN102343290
Docket No. 2011-0731-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 (violation no. 2).

Media:

MWD

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

approximately two miles south of the intersection of Highway 81/287 and Highway 114 in Wise and Tarrant Counties

Type of Operation:

wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: December 16, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$10,525

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$10,525

Total Due to General Revenue: \$0

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**AQUA DEVELOPMENT, INC.
RN102343290
Docket No. 2011-0731-MWD-E**

Investigation Information

Complaint Date(s): March 8, 2011
Complaint Information: Alleged that there had been a sanitary sewer overflow at the plant that had not been cleaned up and that there was discharge coming from an outfall pipe.

Date(s) of Investigation: March 9, 2011

Date(s) of NOV(s): May 30, 2008

Date(s) of NOE(s): April 23, 2011

Violation Information

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state (damaged pipe at lift station) [TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1) and (4); and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0014910001, Permit Conditions No. 2.g.].
2. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state (Outfall No. 001)[TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1); and TPDES Permit No. WQ0014910001, Other Requirements No. 15].
3. Failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days [30 TEX. ADMIN. CODE § 305.125(1) and (9); and TPDES Permit No. WQ0014910001, Monitoring and Reporting Requirements No. 7.a.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. By March 31, 2011, repaired the broken pipe leading to the onsite lift station;
2. By March 11, 2011, submitted the written noncompliance notification for the unauthorized discharge;
3. By March 31, 2011, cleaned and disinfected the area affected by the unauthorized discharge from the lift station; and
4. By May 4, 2011, capped the pipe from the sand filter and the inactive outfall pipe to prevent further discharge of untreated wastewater.

Technical Requirements:

1. Within 30 days, update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required.
2. Within 45 days submit written certification to demonstrate compliance.

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: November 21, 2011

Executive Summary – Enforcement Matter – Case No. 41624
AQUA DEVELOPMENT, INC.
RN102343290
Docket No. 2011-0731-MWD-E

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (210) 403-34023
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: JR Cao, Water Enforcement Section, (512) 239-2543

TCEQ Regional Contact: Sid Slocum, Dallas/Fort Worth Regional Office, (817) 588-5800

Respondent: Steven Blackhurst, Environmental Compliance Manager, Aqua Development, Inc.,
1106 Clayton Lane, Suite 400 W, Austin, Texas 78723

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	2-May-2011	Screening	9-May-2011	EPA Due	
	PCW	4-Nov-2011				

RESPONDENT/FACILITY INFORMATION						
Respondent	Aqua Development, Inc.					
Reg. Ent. Ref. No.	RN102343290					
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	41624	No. of Violations	3			
Docket No.	2011-0731-MWD-E	Order Type	Findings			
Media Program(s)	Water Quality	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	JR Cao			
		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	\$13,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$650
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Notes	Enhancement for one NOV with a same/similar violation.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$3,125
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$22	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,825	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,525
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$10,525
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,525
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$10,525
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Screening Date 9-May-2011

Docket No. 2011-0731-MWD-E

PCW

Respondent Aqua Development, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41624

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102343290

Media [Statute] Water Quality

Enf. Coordinator JR Cao

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>)	1	5%
	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) 5%

>> 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 a same/similar violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 9-May-2011

Docket No. 2011-0731-MWD-E

PCW

Respondent Aqua Development, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41624

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102343290

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (4), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014910001, Permit Conditions No. 2.g

Violation Description Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on March 9, 2011. Specifically, on March 3, 2011, an unauthorized discharge of an unknown amount of sewage occurred from a damaged pipe leading to the onsite lift station and flowed westward toward an unnamed creek.

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 significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

28 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from the date of the discharge (March 3, 2011) to the date of compliance (March 31, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent came into compliance on March 31, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent Aqua Development, Inc.
Case ID No. 41624
Req. Ent. Reference No. RN102343290
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$750	3-Mar-2011	31-Mar-2011	0.08	\$0	\$4	\$4
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the broken pipe and to clean and disinfect the area. Date required is the date of the unauthorized discharge and the 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)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$750

TOTAL

\$4

Screening Date 9-May-2011
Respondent Aqua Development, Inc.
Case ID No. 41624
Reg. Ent. Reference No. RN102343290
Media [Statute] Water Quality
Enf. Coordinator JR Cao

Docket No. 2011-0731-MWD-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number

Rule Cite(s)

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on March 9, 2011. Specifically, wastewater was observed flowing from the inactive Outfall No. 001, and lab results indicate a presence of elevated levels of fecal coliform in the collected sample (7500 colony forming units per 100 milliliters).

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Two monthly events are recommended from the date of the investigation (March 9, 2011) to the date of compliance (May 4, 2011).

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Aqua Development, Inc.
Case ID No. 41624
Req. Ent. Reference No. RN102343290
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$800	9-Mar-2011	4-May-2011	0.15	\$0	\$8	\$9
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to cap the outfall pipe. Date required is the investigation date. Final date is the date the outfall was capped.

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

\$800

TOTAL

\$9

Screening Date 9-May-2011
Respondent Aqua Development, Inc.
Case ID No. 41624
Reg. Ent. Reference No. RN102343290
Media [Statute] Water Quality
Enf. Coordinator JR Cao

Docket No. 2011-0731-MWD-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and (9), and TPDES Permit No. WQ0014910001, Monitoring and Reporting Requirements No. 7.a
Violation Description Failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days. Specifically, notification of the March 3, 2011, discharge was not made orally or by fax within 24 hours. In addition, the written notification was submitted more than five working days after becoming aware of the noncompliance.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text" value="5%"/>
Matrix Notes	<input type="text" value="60% of the permit requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Aqua Development, Inc.
Case ID No. 41624
Req. Ent. Reference No. RN102343290
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$25	4-Mar-2011	11-Mar-2011	0.02	\$0	n/a	\$0
Training/Sampling	\$250	4-Mar-2011	7-Dec-2011	0.76	\$10	n/a	\$10
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 submit the noncompliance notification (\$25) and to update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required (\$250). Date required is the date the noncompliance notification was due. Final date is date the noncompliance notification was received by the TCEQ DFW Region Office and the expected date of compliance, respectively.

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

\$275

TOTAL

\$10

Compliance History

Customer/Respondent/Owner-Operator: CN600789705 Aqua Development, Inc. Classification: AVERAGE Rating: 2.07
Regulated Entity: RN102343290 CHISOLM SPRINGS Classification: AVERAGE Site Rating: 1.00
ID Number(s): WASTEWATER EPA ID TX0119687
WASTEWATER PERMIT WQ0014910001
Location: APPROXIMATELY TWO MILES SOUTH OF THE INTERSECTION OF HIGHWAY 81/287 AND
HIGHWAY 114 IN WISE AND TARRANT COUNTIES, TEXAS
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 20, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 20, 2006 to June 20, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: JR Cao Phone: (512) 239-2543

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.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 08/05/2008 | (688404) |
| 2 | 11/18/2010 | (877083) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|-----------------|--------------------------|
| Date: | 05/30/2008 | (670858) | CN600789705 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | TWC Chapter 26 26.121 | | |
| Description: | Failure to prevent the unauthorized discharge of wastewater. | | |

- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AQUA DEVELOPMENT, INC;
RN102343290**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-0731-MWD-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Aqua Development, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that it has 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, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates a wastewater treatment facility located approximately two miles south of the intersection of Highway 81/287 and Highway 114 in Wise and Tarrant Counties, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on March 9, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, on March 3, 2011, an unauthorized discharge of an unknown amount of sewage occurred from a damaged pipe leading to the onsite lift station and flowed westward toward an unnamed creek;

- b. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, wastewater was observed flowing from the inactive Outfall No. 001, and lab results indicate a presence of elevated levels of fecal coliform in the collected sample (7500 colony forming units per 100 milliliters); and
 - c. Failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days. Specifically, notification of the March 3, 2011, discharge was not made orally or by fax within 24 hours. In addition, the written notification was submitted more than five working days after becoming aware of the noncompliance.
3. Respondent received notice of the violations on or about April 27, 2011.
4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. By March 31, 2011, repaired the broken pipe leading to the onsite lift station (Conclusion of Law No. 2);
 - b. By March 11, 2011, submitted the written noncompliance notification for the unauthorized discharge which occurred on March 3, 2011 (Conclusion of Law No. 4);
 - c. By March 31, 2011, cleaned and disinfected the area affected by the unauthorized discharge from the lift station (Conclusion of Law No. 2); and
 - d. By May 4, 2011, capped the pipe from the sand filter and the inactive outfall pipe to prevent further discharge of untreated wastewater (Conclusion of Law No. 3).

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1) and (4); and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014910001, Permit Conditions No. 2.g.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1); 30 TEX. ADMIN. CODE § 305.125(1); and TPDES Permit No. WQ0014910001, Other Requirements No. 15.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five

working days, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (9); and TPDES Permit No. WQ0014910001, Monitoring and Reporting Requirements No. 7.a.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of ten thousand five hundred twenty-five dollars (\$10,525.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7053. Respondent paid ten thousand five hundred twenty-five dollars (\$10,525.00) dollars of the administrative penalty.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Respondent shall update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required, in accordance with TPDES Permit No. WQ0014910001, Monitoring and Reporting Requirements No. 7.a.
 - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No.2.c., below, to demonstrate compliance with Ordering Provision No. 2.a.
 - c. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations.”

Respondent shall submit the written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

8. 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.
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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

1/6/2012

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Acua Development, Inc., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature

Robert K. Laughman

Name (Printed or typed)

Authorized representative of
Acua Development, Inc.

11/21/2011

Date

President

Title

