

**Executive Summary – Enforcement Matter – Case No. 44598**

**City of Big Wells**

**RN101720357**

**Docket No. 2012-1467-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

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

**Media:**

MWD

**Small Business:**

No

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

City of Big Wells WTF, located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of U.S. Highway 85, Dimmit 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:** August 2, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$35,325

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

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

**Total Paid to General Revenue:** \$990

**Total Due to General Revenue:** \$34,335

Payment Plan: 35 payments of \$981 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 44598**

**City of Big Wells**

**RN101720357**

**Docket No. 2012-1467-MWD-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** July 3, 2012

**Date(s) of NOE(s):** July 13, 2012

***Violation Information***

Failed to comply with permitted effluent limits for 5-day biochemical oxygen demand, *E. coli*, and total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013782001 Effluent Limitations and Monitoring Requirements No. 1].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to, within 90 days, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0013782001, 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:** Nick Nevid, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2612; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable Jesus G. Ponce, Mayor, City of Big Wells, P.O. Box 68, Big Wells, Texas 78830

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 23-Jul-2012 | <b>Screening</b> | 24-Jul-2012 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 25-Apr-2013 |                  |             |                |  |

|  |                   |
|--|-------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                   |
| <b>Respondent</b>                      | City of Big Wells |
| <b>Reg. Ent. Ref. No.</b>              | RN101720357       |
| <b>Facility/Site Region</b>            | 16-Laredo         |
| <b>Major/Minor Source</b>              | Minor             |

|  |                 |                              |                    |
|--|-----------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                 | <b>No. of Violations</b>     | 1                  |
| <b>Enf./Case ID No.</b>                | 44598           | <b>Order Type</b>            | Findings           |
| <b>Docket No.</b>                      | 2012-1467-MWD-E | <b>Government/Non-Profit</b> | Yes                |
| <b>Media Program(s)</b>                | Water Quality   | <b>Enf. Coordinator</b>      | Nick Nevid         |
| <b>Multi-Media</b>                     |                 | <b>EC's Team</b>             | Enforcement Team 3 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0             | <b>Maximum</b>               | \$25,000           |

## Penalty Calculation Section

|   |                   |          |
|---|-------------------|----------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$22,500 |
|---|-------------------|----------|

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

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

|                           |                   |                                |          |
|---------------------------|-------------------|--------------------------------|----------|
| <b>Compliance History</b> | 57.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$12,825 |
|---------------------------|-------------------|--------------------------------|----------|

|              |   |
|--------------|---|
| <b>Notes</b> | Enhancement for six months of self-reported effluent violations, one NOV with a same/similar violation, one NOV with dissimilar violations, and one order with denial language. |
|--------------|---|

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

|              |  |
|--------------|--|
| <b>Notes</b> | The Respondent does not meet the culpability criteria. |
|--------------|--|

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                         |                   |                   |     |
|-------------------------|-------------------|-------------------|-----|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | \$0 |
|-------------------------|-------------------|-------------------|-----|

|                            |          |                                   |
|----------------------------|----------|-----------------------------------|
| Total EB Amounts           | \$666    | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$10,000 |                                   |

|                             |                       |          |
|-----------------------------|-----------------------|----------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$35,325 |
|-----------------------------|-----------------------|----------|

|   |      |                   |     |
|---|------|-------------------|-----|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 0.0% | <b>Adjustment</b> | \$0 |
|---|------|-------------------|-----|

|              |  |
|--------------|--|
| <b>Notes</b> |  |
|--------------|--|

|                             |          |
|-----------------------------|----------|
| <b>Final Penalty Amount</b> | \$35,325 |
|-----------------------------|----------|

|                                   |                               |          |
|-----------------------------------|-------------------------------|----------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$35,325 |
|-----------------------------------|-------------------------------|----------|

|                 |                |                   |     |
|-----------------|----------------|-------------------|-----|
| <b>DEFERRAL</b> | 0.0% Reduction | <b>Adjustment</b> | \$0 |
|-----------------|----------------|-------------------|-----|

|              |   |
|--------------|---|
| <b>Notes</b> | No deferral is recommended for Findings Orders. |
|--------------|---|

|                        |          |
|------------------------|----------|
| <b>PAYABLE PENALTY</b> | \$35,325 |
|------------------------|----------|

Screening Date 24-Jul-2012

Docket No. 2012-1467-MWD-E

PCW

Respondent City of Big Wells

Policy Revision 3 (September 2011)

Case ID No. 44598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101720357

Media [Statute] Water Quality

Enf. Coordinator Nick Nevid

### 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> )  | 7                 | 35%     |
|                               | Other written NOVs   | 1                 | 2%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 1                 | 20%     |
|                               | 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) 57%

>> 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 six months of self-reported effluent violations, one NOV with a same/similar violation, one NOV with dissimilar violations, and one order with denial language.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 57%

>> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 57%

Screening Date 24-Jul-2012

Docket No. 2012-1467-MWD-E

PCW

Respondent City of Big Wells

Policy Revision 3 (September 2011)

Case ID No. 44598

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101720357

Media [Statute] Water Quality

Enf. Coordinator Nick Nevid

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 ("TPDES") Permit No. WQ0013782001 Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on July 3, 2012, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    | X     |          |       |
| Potential |       |          |       |

Percent 30.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amount of pollutants exceeded levels protective of human health or the environment. In addition, E. coli and total suspended solids were considered. As a result of the E. coli discharges, human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 3

91 Number of violation days

mark only one with an x

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      | X |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event |   |

Violation Base Penalty \$22,500

Three monthly events are recommended for January 2012, February 2012, and March 2012.

Good Faith Efforts to Comply

0.0% Reduction

\$0

|               | 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 \$22,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$666

Violation Final Penalty Total \$35,325

This violation Final Assessed Penalty (adjusted for limits) \$35,325

## Economic Benefit Worksheet

**Respondent** City of Big Wells  
**Case ID No.** 44598  
**Reg. Ent. Reference No.** RN101720357  
**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)        |          |             |             | 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)        | \$10,000 | 31-Jan-2012 | 31-May-2013 | 1.33 | \$666 | n/a | \$666 |

#### Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance. Final date is the anticipated 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

\$10,000

**TOTAL**

\$666

**City of Big Wells**  
**TPDES Permit No. WQ0013782001**  
**Docket No. 2012-1467-MWD-E**

| Effluent Violation Table   |                   |               |            |
|--|-------------------|---------------|------------|
| Permitted Effluent Limits  | Monitoring Period |               |            |
|  | January 2012      | February 2012 | March 2012 |
| BOD <sub>5</sub> Daily Average Concentration<br>(Limit = 30 mg/L)      | 75                | 76            | 68         |
| BOD <sub>5</sub> Single Grab Concentration<br>(Limit = 100 mg/L)       | c                 | 131           | 102        |
| <i>E. coli</i> Daily Average Concentration<br>(Limit = 126 CFU/100 ml) | 9,800             | 28,200        | 13,000     |
| <i>E. coli</i> Single Grab Concentration<br>(Limit = 394 CFU/100 ml)   | 9,800             | 28,200        | 12,200     |
| TSS Daily Average Concentration<br>(Limit = 90 mg/L)                   | 127.5             | 111           | 113        |

BOD<sub>5</sub> = Biochemical Oxygen Demand (5-Day)  
mg/L = milligrams per liter  
*E. coli* = *Escherichia coli*  
CFU/100 ml = Colony Forming Units per 100 milliliters  
TSS = Total Suspended Solids  
c = compliant



# Compliance History Report

|   |  |                         |                           |
|---|--|-------------------------|---------------------------|
| Customer/Respondent/Owner-Operator:           | CN600667364 City of Big Wells  | Classification: AVERAGE | Rating: 3.22              |
| Regulated Entity:                             | RN101720357 CITY OF BIG WELLS  | Classification: AVERAGE | Site Rating: 3.43         |
| ID Number(s):                                 | WASTEWATER PERMIT<br>WASTEWATER EPA ID   |                         | WQ0013782001<br>TX0104884 |
| Location:                                     | Located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of United States Highway 85 in Dimmit County, Texas 78830 |                         |                           |
| TCEQ Region:                                  | REGION 16 - LAREDO   |                         |                           |
| Date Compliance History Prepared:             | July 23, 2012  |                         |                           |
| Agency Decision Requiring Compliance History: | Enforcement  |                         |                           |
| Compliance Period:                            | July 23, 2007 to July 23, 2012   |                         |                           |

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

Name: Nick Nevid Phone: (512) 239 - 2612

### 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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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: 07/20/2009 ADMINORDER 2008-1160-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(17)
- Rqmt Prov: Self-reporting Requirements PERMIT
- Description: Failure to submit timely DMRs for the monitoring periods ending February and August 2004.
- Classification: Moderate
- Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)
- Rqmt Prov: TPDES Permit No. 13782001, Sludge Requir PERMIT
- Description: Failure to submit annual sludge reports for the years 2005 and 2006 to the Commission by September 1 of each year.
- 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 | 04/02/2012 | (1011611) |
| 2 | 07/16/2012 | (1015881) |
| 3 | 05/03/2012 | (1017988) |

|    |            |           |
|----|------------|-----------|
| 4  | 06/05/2012 | (1017989) |
| 5  | 01/31/2012 | (1017990) |
| 6  | 08/29/2007 | (574108)  |
| 7  | 11/08/2007 | (628705)  |
| 8  | 05/30/2008 | (681573)  |
| 9  | 05/06/2008 | (694968)  |
| 10 | 07/14/2008 | (694969)  |
| 11 | 04/02/2008 | (716467)  |
| 12 | 08/12/2008 | (716468)  |
| 13 | 05/29/2009 | (744798)  |
| 14 | 02/26/2009 | (817262)  |
| 15 | 06/17/2009 | (817263)  |
| 16 | 06/17/2009 | (817264)  |
| 17 | 02/26/2009 | (817265)  |
| 18 | 09/17/2009 | (817266)  |
| 19 | 10/15/2009 | (817267)  |
| 20 | 01/08/2010 | (817268)  |
| 21 | 12/22/2008 | (817269)  |
| 22 | 01/08/2010 | (817270)  |
| 23 | 01/08/2010 | (817271)  |
| 24 | 04/15/2010 | (835282)  |
| 25 | 05/05/2010 | (835283)  |
| 26 | 05/05/2010 | (835284)  |
| 27 | 07/01/2010 | (862021)  |
| 28 | 09/20/2010 | (875489)  |
| 29 | 09/20/2010 | (875490)  |
| 30 | 09/02/2010 | (883028)  |
| 31 | 10/28/2010 | (883029)  |
| 32 | 12/30/2010 | (897811)  |
| 33 | 02/22/2010 | (903699)  |
| 34 | 12/30/2010 | (903700)  |
| 35 | 02/17/2011 | (910599)  |
| 36 | 03/06/2011 | (917861)  |
| 37 | 04/04/2011 | (939557)  |
| 38 | 05/27/2011 | (939558)  |
| 39 | 07/08/2011 | (954229)  |
| 40 | 07/08/2011 | (954230)  |
| 41 | 08/18/2011 | (960808)  |
| 42 | 10/06/2011 | (966890)  |
| 43 | 10/11/2011 | (966891)  |
| 44 | 10/06/2011 | (966892)  |
| 45 | 10/06/2011 | (966893)  |
| 46 | 10/06/2011 | (966894)  |
| 47 | 10/06/2011 | (966895)  |
| 48 | 10/11/2011 | (966896)  |
| 49 | 10/06/2011 | (966897)  |
| 50 | 10/06/2011 | (966898)  |
| 51 | 08/18/2011 | (966899)  |

52 10/06/2011 (966900)  
 53 10/06/2011 (966901)  
 54 10/06/2011 (966902)  
 55 10/06/2011 (966903)  
 56 10/06/2011 (966904)  
 57 10/06/2011 (966905)  
 58 08/18/2011 (972874)  
 59 11/10/2011 (979011)  
 60 01/31/2012 (992199)  
 61 02/27/2012 (999513)

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

Date: 09/30/2007 (628705) CN600667364  
 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: 02/29/2008 (716467) CN600667364  
 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: 05/01/2009 (744798) CN600667364  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to have flow measuring device properly installed.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)  
 Description: Failure to properly complete chain of custody tags.  
 Date: 01/31/2012 (999513) CN600667364  
 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: 02/29/2012 (1011611) CN600667364  
 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: 03/31/2012 (1017988) CN600667364  
 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: 04/30/2012 (1017989) CN600667364  
 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: 05/02/2012 (1001056) CN600667364  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Operational Requirements 1 PERMIT  
 Description: Failure to maintain the flow measuring device.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Operational Requirements PERMIT  
 Description: Failure to properly maintain the bar screen.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Effluent Limitations & Monitoring Req. 1 PERMIT

Description: Failure to maintain compliance with the discharge effluent limitations.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF BIG WELLS  
RN101720357**

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

## **AGREED ORDER DOCKET NO. 2012-1467-MWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding the City of Big Wells (“Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

### **I. FINDINGS OF FACT**

1. The Respondent owns and operates a wastewater treatment facility located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of United States Highway 85 in Dimmit County, Texas (the “Facility”).

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on July 3, 2012, TCEQ staff documented the following from self-reported discharge monitoring reports:

| Effluent Violation Table   |                   |               |            |
|--|-------------------|---------------|------------|
| Permitted Effluent Limits  | Monitoring Period |               |            |
|  | January 2012      | February 2012 | March 2012 |
| BOD <sub>5</sub> Daily Average Concentration<br>(Limit = 30 mg/L)      | 75                | 76            | 68         |
| BOD <sub>5</sub> Single Grab Concentration<br>(Limit = 100 mg/L)       | c                 | 131           | 102        |
| <i>E. coli</i> Daily Average Concentration<br>(Limit = 126 CFU/100 ml) | 9,800             | 28,200        | 13,000     |
| <i>E. coli</i> Single Grab Concentration<br>(Limit = 394 CFU/100 ml)   | 9,800             | 28,200        | 12,200     |
| TSS Daily Average Concentration<br>(Limit = 90 mg/L)                   | 127.5             | 111           | 113        |

BOD<sub>5</sub> = Biochemical Oxygen Demand (5-Day)  
 mg/L = milligrams per liter  
*E. coli* = *Escherichia coli*  
 CFU/100 ml = Colony Forming Units per 100 milliliters  
 TSS = Total Suspended Solids  
 c = compliant

4. The Respondent received notice of the violations on July 16, 2012.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted 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. WQ0013782001 Effluent Limitations and Monitoring Requirements No. 1.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirty-Five Thousand Three Hundred Twenty-Five Dollars (\$35,325) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid Nine Hundred Ninety Dollars (\$990) of the administrative penalty. The remaining amount of Thirty-Four Thousand Three Hundred Thirty-Five Dollars (\$34,335) of the administrative penalty shall be payable in 35 monthly payments of Nine Hundred Eighty-One Dollars (\$981) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

## III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Thirty-Five Thousand Three Hundred Twenty-Five Dollars (\$35,325) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are

not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Big Wells, Docket No. 2012-1467-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. It is further ordered that, within 90 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0013782001, 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  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing",

and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Davis  
For the Executive Director

9/3/13  
Date

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

I understand that by entering into this Agreed Order, the City of Big Wells waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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

Jesús G. Ponce  
Signature

5-13-2013  
Date

JESUS G. PONCE  
Name (Printed or typed)  
Authorized Representative of  
City of Big Wells

Mayor  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.