

**Executive Summary – Enforcement Matter – Case No. 44273**  
**Texas Department of Transportation**  
**RN106479983**  
**Docket No. 2012-1177-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:**

Navarro County Safety Rest Area IH-45, located approximately 2.8 miles southeast of the intersection of State Highway 14 and IH-45, south of Richland, Navarro County

**Type of Operation:**

Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 15, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$13,500

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

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

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

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

Payment Plan: N/A

**SEP Conditional Offset:** \$13,500

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance

**Compliance History Classifications:**

Person/CN - Average

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 44273  
Texas Department of Transportation  
RN106479983  
Docket No. 2012-1177-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** April 26, 2012  
**Date(s) of NOE(s):** May 10, 2012

***Violation Information***

Failed to comply with permitted effluent limits for residual chlorine 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. WQ0014854001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require Respondent to, within 90 days, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0014854001, 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:** Heather Brister, Enforcement Division,  
Enforcement Team 1, MC R-09, (254) 761-3034; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**Executive Summary – Enforcement Matter – Case No. 44273**  
**Texas Department of Transportation**  
**RN106479983**  
**Docket No. 2012-1177-MWD-E**

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division,  
MC 219, (512) 239-3565

**Respondent:** F. Howard Holland, P.E., Maintenance Division Director, Texas  
Department of Transportation, 125 East 11th Street, Austin, Texas 78701

Toribio Garza, Jr., Maintenance Division Director, Texas Department of Transportation,  
125 East 11th Street, Austin, Texas 78701

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



**Attachment A**  
**Docket Number: 2012-1177-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Texas Department of Transportation</b>
<b>Payable Penalty Amount:</b>	<b>Thirteen Thousand Five Dollars (\$13,500)</b>
<b>SEP Amount:</b>	<b>Thirteen Thousand Five Dollars (\$13,500)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D") - Water or Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Navarro County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for 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

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Water or Wastewater Treatment Assistance Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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.

Texas Department of Transportation  
Agreed Order - Attachment A

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

c. Minimum Expenditure

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, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
Attention: Ken Awtrey  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, 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. 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 Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Texas Department of Transportation  
Agreed Order - Attachment A

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

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

**5. Publicity**

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

**6. Clean Texas Program**

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

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for 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 3 (September 2011)

PCW Revision August 3, 2011

<b>TCEQ</b>	<b>DATES</b>	<b>Assigned</b>	14-May-2012	<b>Screening</b>	31-May-2012	<b>EPA Due</b>	
		<b>PCW</b>	26-Sep-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Texas Department of Transportation
<b>Reg. Ent. Ref. No.</b>	RN106479983
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44273	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1177-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$11,250**

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

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

**Compliance History** **20.0%** Enhancement **Subtotals 2, 3, & 7** **\$2,250**

Notes: Enhancement for four months of self-reported effluent violations.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$326  
 Approx. Cost of Compliance: \$6,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$13,500**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$13,500**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$13,500**

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

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

Notes:

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$13,500**

**Screening Date** 31-May-2012

**Docket No.** 2012-1177-MWD-E

**PCW**

**Respondent** Texas Department of Transportation

Policy Revision 3 (September 2011)

**Case ID No.** 44273

PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN106479983

**Media [Statute]** Water Quality

**Enf. Coordinator** Heather Brister

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	4	20%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 20%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for four months of self-reported effluent violations.

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

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 20%

Screening Date 31-May-2012

Docket No. 2012-1177-MWD-E

PCW

Respondent Texas Department of Transportation

Policy Revision 3 (September 2011)

Case ID No. 44273

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106479983

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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. WQ0014854001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on April 26, 2012. See attached 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 ammonia nitrogen ("NH<sub>3</sub>-N") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of the 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 1

31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

One monthly event is recommended for the month of December 2011.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/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 \$326

Violation Final Penalty Total \$9,000

This violation Final Assessed Penalty (adjusted for limits) \$9,000

## Economic Benefit Worksheet

**Respondent** Texas Department of Transportation

**Case ID No.** 44273

**Reg. Ent. Reference No.** RN106479983

**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)	\$6,000	31-Dec-2011	31-Jan-2013	1.09	\$326	n/a	\$326

**Notes for DELAYED costs**

Estimated cost to determine the cause of noncompliance and to make necessary adjustments to achieve compliance with the permitted effluent limits. Date required is the initial month 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**

\$6,000

**TOTAL**

\$326

Screening Date 31-May-2012

Docket No. 2012-1177-MWD-E

PCW

Respondent Texas Department of Transportation

Policy Revision 3 (September 2011)

Case ID No. 44273

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106479983

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0014854001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on April 26, 2012. See attached table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate NH<sub>3</sub>-N to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Chlorine residual was also considered. As a result of the discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

31 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended for the month of January 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

## Economic Benefit Worksheet

**Respondent** Texas Department of Transportation

**Case ID No.** 44273

**Reg. Ent. Reference No.** RN106479983

**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)				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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1.

**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

\$0

**TOTAL**

\$0

**Respondent:** Texas Department of Transportation  
**ID Number(s):** TPDES Permit No. WQ0014854001  
**Docket Number:** 2012-1177-MWD-E

**Corresponds to Violation Number: 1 and 2**

<b>EFFLUENT PARAMETER</b>				
<b>Permit Limit</b>				
	Chlorine Residual Minimum Concentration 1.0 Milligrams per Liter	Ammonia Nitrogen Daily Average Concentration 3 Milligrams per Liter	Ammonia Nitrogen Daily Average Loading 0.35 Pounds per Day	Ammonia Nitrogen Single Grab Concentration 15 Milligrams per Liter
<b>Month/Year</b>				
December 2011	c	54.2	4.6493	123
January 2012	0.8	50.4	1.2716	90.1

c = compliant



The TCEQ is committed to accessibility.  
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN600803456, RN106479983, Rating Year 2011 which includes Compliance History (CH) components from September 1, 2006, through August 31, 2011.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600803456, Texas Department of Transportation	<b>Classification:</b> AVERAGE	<b>Rating:</b> 3.00
<b>Regulated Entity:</b>	RN106479983, NAVARRO COUNTY SAFETY REST AREA IH 45	<b>Classification:</b> NOT APPLICABLE	<b>Rating:</b> N/A
<b>Complexity Points:</b>	N/A	<b>Repeat Violator:</b>	N/A
<b>CH Group:</b>	14 -Other		
<b>Location:</b>	APPROX 2.8 MILES SOUTHEAST OF THE INTERSECTION OF STATE HIGHWAY 14 AND IH 45, SOUTH OF RICHLAND IN NAVARRO COUNTY TX		
<b>TCEQ Region:</b>	REGION 04- DFW METROPLEX		

### ID Number(s):

WASTEWATER EPA ID TX0130028

WASTEWATER AUTHORIZATION R14854001

WASTEWATER PERMIT WQ0014854001

**Compliance History Period:** September 01, 2006 to August 31, 2011      **Rating Year:** 2011      **Rating Date:** 09/01/2011

**Date Compliance History Report Prepared:** October 15, 2012

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 05, 2007 to July 05, 2012

### TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

**Name:** Heather Brister

**Phone:** (254) 761-3034

### Site and owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

### Components (Multimedia) for the Site Are Listed in Sections A- J

#### A. Final Orders, court judgments, and consent decrees:

N/A

#### B. Criminal convictions:

N/A

#### C. Chronic excessive emissions events:

N/A

#### D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	December 09, 2011	(979662)
Item 2	December 13, 2011	(979659)
Item 3	December 15, 2011	(986515)
Item 4	May 17, 2012	(1018695)
Item 5	June 18, 2012	(1026429)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- |   |  |             |                 |          |
|---|--|-------------|-----------------|----------|
| 1 | Date: 12/31/2011 (992890)  | CN600803456 |                 |          |
|   | Self Report? YES   |             | Classification: | Moderate |
|   | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>30 TAC Chapter 305, SubChapter F 305.125(1) |             |                 |          |
|   | Description: Failure to meet the limit for one or more permit parameter                            |             |                 |          |
| 2 | Date: 01/31/2012 (100240)  | CN600803456 |                 |          |
|   | Self Report? YES   |             | Classification: | Moderate |
|   | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>30 TAC Chapter 305, SubChapter F 305.125(1) |             |                 |          |
|   | Description: Failure to meet the limit for one or more permit parameter                            |             |                 |          |
| 3 | Date: 02/29/2012 (1005736)   | CN600803456 |                 |          |
|   | Self Report? YES   |             | Classification: | Moderate |
|   | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>30 TAC Chapter 305, SubChapter F 305.125(1) |             |                 |          |
|   | Description: Failure to meet the limit for one or more permit parameter                            |             |                 |          |
| 4 | Date: 03/31/2012 (1012296)   | CN600803456 |                 |          |
|   | Self Report? YES   |             | Classification: | Moderate |
|   | Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>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  
TEXAS DEPARTMENT OF  
TRANSPORTATION  
RN106479983

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

**AGREED ORDER**  
**DOCKET NO. 2012-1177-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 Texas Department of Transportation ("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 plant located approximately 2.8 miles southeast of the intersection of State Highway 14 and Interstate Highway 45, south of Richland in Navarro 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 April 26, 2012, TCEQ staff documented the following effluent values based on self-reported discharge monitoring reports ("DMRs"):

<b>EFFLUENT PARAMETER</b>				
<b>Permit Limit</b>				
	Chlorine Residual Minimum Concentration 1.0 Milligrams per Liter	Ammonia Nitrogen Daily Average Concentration 3 Milligrams per Liter	Ammonia Nitrogen Daily Average Loading 0.35 Pounds per Day	Ammonia Nitrogen Single Grab Concentration 15 Milligrams per Liter
<b>Month/Year</b>				
December 2011	c	54.2	4.6493	123
January 2012	0.8	50.4	1.2716	90.1

c = compliant

4. The Respondent received notice of the violations on May 15, 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. WQ0014854001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2.
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 Thirteen Thousand Five Hundred Dollars (\$13,500) 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. Thirteen Thousand Five Hundred Dollars (\$13,500) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Thirteen Thousand Five Hundred Dollars (\$13,500) 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: Texas Department of Transportation, Docket No. 2012-1177-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 the SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Thirteen Thousand Five Hundred Dollars (\$13,500) of the assessed administrative penalty shall be offset with the condition that the 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 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0014854001, 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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. 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.
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, 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.

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

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/3/13

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the Texas Department of Transportation. I am authorized to agree to the attached Agreed Order on behalf of the Texas Department of Transportation, 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 Texas Department of Transportation 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.

F. Howard Holland, P.E.  
Signature

12/20/12  
Date

F. Howard Holland, P.E.  
Name (Printed or typed)  
Authorized Representative of  
Texas Department of Transportation

Maintenance Division Director  
Title

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

**Attachment A**  
**Docket Number: 2012-1177-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Texas Department of Transportation</b>
<b>Payable Penalty Amount:</b>	<b>Thirteen Thousand Five Dollars (\$13,500)</b>
<b>SEP Amount:</b>	<b>Thirteen Thousand Five Dollars (\$13,500)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D") - Water or Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Navarro County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for 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

Respondent shall contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Water or Wastewater Treatment Assistance Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

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.

Texas Department of Transportation  
Agreed Order - Attachment A

b. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems.

c. Minimum Expenditure

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, Respondent must contribute the SEP amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
Attention: Ken Awtrey  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, 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. 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 Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

Texas Department of Transportation  
Agreed Order - Attachment A

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

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

**5. Publicity**

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

**6. Clean Texas Program**

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

**7. Other SEPs by TCEQ or Other Agencies**

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