

Executive Summary – Enforcement Matter – Case No. 43786
Tall Timbers Utility Company, Inc.
RN101519981
Docket No. 2012-0629-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:

Tall Timbers Sewage Treatment Plant, County Road 28 approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69 South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of Tyler, Smith 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: December 21, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$60,000

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$30,000

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$30,000

Name of SEP: Bunn's Lake Habitat Acquisition & Preservation Project

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. 43786
Tall Timbers Utility Company, Inc.
RN101519981
Docket No. 2012-0629-MWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: November 28, 2011
Date(s) of NOE(s): February 28, 2012

Violation Information

Failed to to prevent the discharge of sewage sludge into water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 305.125(1) and 305.125(5), and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0013000001, Permit Conditions No. 2.d.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures at the Facility:

- a. By August 1, 2011, repaired a malfunctioning blower unit;
- b. On October 28, 2011, placed a 50 foot oil containment boom at the outfall to trap solids;
- c. By November 13, 2011, removed 41,200 gallons of discharged effluent that contained a 0.1% solids concentration or approximately 41 pounds of sewage sludge, which is the semi-solid or liquid treatment process residue, from the receiving stream; and
- d. By December 31, 2011, removed the Facility’s final treatment line and installed new treatment lines, leading to the equalization basin.

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:
 - a. Within 30 days, update the Facility’s operational guidance and conduct employee training to ensure that all Facility operational procedures are properly accomplished, including procedures for the prevention of the discharge of sewage sludge into water in the state;
 - b. Within 45 days, submit written certification demonstrating compliance with a.;

Executive Summary – Enforcement Matter – Case No. 43786
Tall Timbers Utility Company, Inc.
RN101519981
Docket No. 2012-0629-MWD-E

c. Within 45 days, complete remediation of the receiving stream by removing and disposing of sludge and related materials (“removed materials”) from the impacted portions of the receiving stream. Disposal of any removed materials shall be carried out in accordance with all applicable rules of the TCEQ and in a manner that prevents the contamination of surface or groundwater. The Facility shall maintain written records of the location, nature and amount of each type of sludge or other deposits removed, the technique used for removal and transport, and the ultimate disposal site;

d. Within 60 days, submit written certification demonstrating compliance with c.;

e. Within 60 days, develop and implement a solids management plan (“SMP”). The SMP shall outline a program of internal process control testing to monitor the efficiency of the wastewater treatment plant and to maintain the proper solids balance within the system. The plan shall be prepared by a Texas registered professional engineer. At a minimum, the plan shall include the following items:

i. A schedule for performing the following process control analyses and recommended ranges to be maintained: mixed liquor thirty-minute sludge settleability, mixed liquor suspended solids, mixed liquor dissolved oxygen concentration, clarifier sludge blanket depth, and residual chlorine concentration;

ii. Procedures outlining actions to be taken in the event that any of the above process control analyses fall outside the recommended range; and

iii. Specific sampling locations for the above stated process control measurements;

Organized, written records of the process control analyses shall be maintained for a period of three years at the Facility in a daily log book and shall be made available to TCEQ representatives upon request.

f. Within 75 days, submit written certification demonstrating compliance with e.; and

g. Within 120 days, submit written certification of compliance all permit requirements of TPDES Permit No. WQ0013000001, including specific corrective actions that were implemented at the Facility to achieve compliance with all permit requirements, including the prevention of the discharge of sewage sludge into water in the state.

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

Executive Summary – Enforcement Matter – Case No. 43786
Tall Timbers Utility Company, Inc.
RN101519981
Docket No. 2012-0629-MWD-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jill Russell, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-4564; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

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

Respondent: Gregory S. Sorensen, Vice President & General Manager, Tall Timbers Utility Company, Inc., 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201-4234

Beatrice Casarez, Manager, Service of Process Team, Tall Timbers Utility Company, Inc., 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201-4234

Respondent's Attorney: Mark H. Zeppa, Attorney, Law Offices of Mark H. Zeppa, P.C., 4833 Spicewood Springs Road, Suite 202, Austin, Texas 78759-8436

Attachment A
Docket Number: 2012-0629-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Tall Timbers Utility Company, Inc.
Penalty Amount: Sixty Thousand Dollars (\$60,000)
SEP Amount: Thirty Thousand Dollars (\$30,000)
Type of SEP: Contribution to a Third-Party Pre-Approved SEP
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”) - Water or Wastewater Treatment Assistance
Location of SEP: Smith County; Neches and Sabine River Basins; Carrizo-Wilcox Aquifer

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 RC&D to be used for the 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.

b. Environmental Benefit

Tall Timbers Utility Company, Inc.
Agreed Order - Attachment A

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.

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

Tall Timbers Utility Company, Inc.
Agreed Order - Attachment A

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

DATES	Assigned	5-Mar-2012	Screening	13-Mar-2012	EPA Due	
	PCW	7-Sep-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	Tall Timbers Utility Company, Inc.		
Reg. Ent. Ref. No.	RN101519981		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	43786	No. of Violations	1
Docket No.	2012-0629-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jill Russell
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$30,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **100.0%** Enhancement **Subtotals 2, 3, & 7** **\$30,000**

Notes: Enhancement for 13 months of self-reported effluent violations, three NOV's with same/similar violations, and two orders with denial of liability.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$1,693
 Approx. Cost of Compliance: \$30,288
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$60,000**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$60,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$60,000**

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 **\$60,000**

Screening Date 13-Mar-2012

Docket No. 2012-0629-MWD-E

PCW

Respondent Tall Timbers Utility Company, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43786

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101519981

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

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>)	16	80%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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) 120%

>> 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 13 months of self-reported effluent violations, three NOVs with same/similar violations, and two orders with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 120%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 100%

Screening Date 13-Mar-2012

Docket No. 2012-0629-MWD-E

PCW

Respondent Tall Timbers Utility Company, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43786

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101519981

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and 305.125(5), and Texas Pollutant Discharge Elimination System Permit No. WQ0013000001, Permit Conditions No. 2.d.

Violation Description

Failed to prevent the discharge of sewage sludge into water in the state. Specifically, a significant amount of sludge was noted in the chlorine contact basin resulting in a discharge out of the outfall. Sludge was observed at the outfall and continuing 900 feet downstream. Dissolved oxygen ("DO") readings taken 900 feet downstream indicated concentration levels of 1.94 milligrams per liter. Also documented was the presence of dense populations of tubifex worms and Chironomidae larvae ("bloodworms").

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	Harm		
	Major	Moderate	Minor

Percent 0.0%

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 \$17,500

\$7,500

Violation Events

Number of Violation Events 4

106 Number of violation days

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

Violation Base Penalty \$30,000

Four monthly events are recommended from November 28, 2011, the date the violation was photographically documented, to the March 13, 2012 screening date.

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 \$30,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,693

Violation Final Penalty Total \$60,000

This violation Final Assessed Penalty (adjusted for limits) \$60,000

Economic Benefit Worksheet

Respondent Tall Timbers Utility Company, Inc.
Case ID No. 43786
Reg. Ent. Reference No. RN101519981
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)	\$30,288	19-Oct-2011	30-Nov-2012	1.12	\$1,693	n/a	\$1,693

Notes for DELAYED costs

Estimated costs to install new treatment lines, add new polymer to the clarifier, remove, transport, and dispose of discharged sludge, update guidance, conduct employee training, and create a solids management plan. Date Required is the date of the investigation. Final Date is the projected 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	\$30,288	TOTAL	\$1,693
-----------------------------------	----------	--------------	---------

Compliance History Report

Customer/Respondent/Owner-Operator: CN600794945 TALL TIMBERS UTILITY
COMPANY, INC. Classification: AVERAGE Rating: 3.44

Regulated Entity: RN101519981 TALL TIMBERS SEWAGE
TREATMENT PLANT Classification: AVERAGE Site Rating: 3.88

ID Number(s): WASTEWATER PERMIT WQ0013000001
WASTEWATER EPA ID TX0101010

Location: LOCATED ON COUNTY ROAD 28 APPROXIMATELY 2,800 FEET NORTH AND 6,500 FEET WEST OF THE INTERSECTION OF
HIGHWAY 69 SOUTH AND FARM-TO-MARKET ROAD 2813 AND 6.1 MILES SOUTH-SOUTHWEST OF TYLER, IN SMITH COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: May 11, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 11, 2007 to May 11, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jill Russell Phone: 512-239 - 4564

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: 05/11/2007

ADMINORDER 2004-0677-MWD-E

Classification: Minor

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

Rqmt Prov: 13000-001 PERMIT

Operational Req. Prov. 1 & 5 PERMIT

Description: Failure to properly maintain the wastewater collection system in a manner to prevent infiltration. Failure to properly install and maintain the primary flow measuring device.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 317 317.3

Rqmt Prov: Operational Req. Prov. 1 PERMIT

Description: Failure to ensure all lift stations are intruder-resistant with a controlled access.

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 317 317.4(b)(1)

Rqmt Prov: Operational Req. Prov. 1 PERMIT

Description: Failure to properly maintain the wastewater treatment facility's bar screen.

Classification: Moderate

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

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Final Eff Limitations & Mon. Req. #1 PERMIT

Description: Failure to comply with the permit limits for the Tall Timbers site.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: Permit Condition 2.g. PERMIT

Description: Failure to prevent sludge from discharging from the wastewater treatment facility.

Effective Date: 07/02/2011

ADMINORDER 2010-1942-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 permitted effluent limitations.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1	03/26/2012	(1004951)	20	07/21/2008	(716099)
2	05/23/2007	(627881)	21	08/20/2008	(716100)
3	06/20/2007	(627882)	22	10/03/2008	(716101)
4	07/23/2007	(627883)	23	10/24/2008	(716102)
5	09/18/2007	(627885)	24	01/12/2009	(731649)
6	09/24/2007	(627887)	25	01/12/2009	(731650)
7	10/18/2007	(627889)	26	02/19/2009	(755041)
8	11/26/2007	(627891)	27	02/19/2009	(755042)
9	12/12/2007	(627893)	28	03/30/2009	(772188)
10	03/21/2008	(638218)	29	04/20/2009	(772189)
11	02/19/2008	(676260)	30	12/30/2009	(786790)
12	02/11/2008	(676261)	31	04/21/2010	(799016)
13	06/10/2008	(682557)	32	03/12/2010	(816574)
14	03/13/2008	(694639)	33	06/01/2009	(816575)
15	04/18/2008	(694640)	34	06/23/2009	(816576)
16	05/19/2008	(694641)	35	08/07/2009	(816577)
17	09/19/2008	(702945)	36	11/06/2009	(816578)
18	10/15/2008	(705211)	37	09/21/2009	(816579)
19	06/23/2008	(716098)	38	11/06/2009	(816580)
			39	12/07/2009	(816581)

40	01/08/2010	(816582)	55	02/28/2011	(910513)
41	02/08/2010	(816583)	56	03/17/2011	(917752)
42	03/12/2010	(835037)	57	04/25/2011	(929279)
43	05/20/2010	(835038)	58	05/23/2011	(939467)
44	05/28/2010	(835039)	59	06/20/2011	(946872)
45	06/22/2010	(847537)	60	08/01/2011	(960713)
46	09/22/2010	(868497)	61	08/31/2011	(960714)
47	11/19/2010	(872610)	62	09/23/2011	(966803)
48	09/29/2010	(875391)	63	10/21/2011	(972785)
49	09/29/2010	(875392)	64	02/29/2012	(981249)
50	10/18/2010	(882946)	65	12/05/2011	(985759)
51	11/17/2010	(889363)	66	02/29/2012	(988637)
52	12/15/2010	(897732)	67	01/03/2012	(992098)
53	01/24/2011	(903621)	68	01/24/2012	(992099)
54	04/06/2011	(905824)	69	03/28/2012	(995783)
			70	02/16/2012	(999424)

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

Date: 11/30/2007 (627893) CN600794945
 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 (694639) CN600794945
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2008 (716098) CN600794945
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter

Date: 09/25/2008 (702945) CN600794945
 Self Report? NO Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 Description: Failure to properly prevent an unauthorized discharge as specified in the Texas
 Water Code §26.121(a).

Date: 10/17/2008 (705211) CN600794945
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
Description: Failure to properly prevent an unauthorized discharge as specified in the Texas Water Code §26.121(a).

Date: 01/31/2009 (755041) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2009 (772188) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2009 (816580) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2010 (816574) CN600794945
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: 04/30/2010 (835039) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2010 (847537) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2010 (868497) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 12/23/2010 (881401) CN600794945
Self Report? NO Classification: Moderate
Citation: TWC Chapter 26 26.121
Description: Failure to prevent an unauthorized discharge of sewage sludge into the unnamed tributary of West Mud Creek.

Date: 06/30/2011 (960713) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2012 (999424) CN600794945
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 (1004951) CN600794945
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- K. Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
TALL TIMBERS UTILITY COMPANY,	§	
INC.	§	ENVIRONMENTAL QUALITY
RN101519981	§	

AGREED ORDER
DOCKET NO. 2012-0629-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 Tall Timbers Utility Company, Inc. (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent represented by Mr. Mark H. Zeppa, Law Offices of Mark H. Zeppa, P.C., together 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 on County Road 28 approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69

South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of Tyler, in Smith County, Texas (the "Facility").

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation concluded on November 28, 2011, TCEQ staff documented, that the Respondent did not prevent the discharge of sewage sludge into water in the state. Specifically, a significant amount of sludge was noted in the chlorine contact basin resulting in a discharge out of the outfall. Sludge was observed at the outfall and continuing 900 feet downstream. Dissolved oxygen ("DO") readings taken 900 feet downstream indicated DO concentration levels of 1.94 milligrams per liter. Also documented was the presence of dense populations of tubifex worms and Chironomidae larvae ("bloodworms").
4. The Respondent received notice of the violations on February 28, 2012.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By August 1, 2011, repaired a malfunctioning blower unit;
 - b. On October 28, 2011, placed a 50 foot oil containment boom at the outfall to trap solids;
 - c. By November 13, 2011, removed 41,200 gallons of discharged effluent that contained a 0.1% solids concentration or approximately 41 pounds of sewage sludge, which is the semi-solid or liquid treatment process residue, from the receiving stream; and
 - d. By December 31, 2011, removed the Facility's final treatment line and installed new treatment lines, leading to the equalization basin.

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 prevent the discharge of sewage sludge into water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE §§ 305.125(1) and 305.125(5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013000001, Permit Conditions No. 2.d.
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 Sixty Thousand Dollars (\$60,000) 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 Thirty Thousand Dollars (\$30,000) of the administrative penalty, and Thirty Thousand Dollars (\$30,000) 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 Sixty Thousand Dollars (\$60,000) 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: Tall Timbers Utility Company, Inc., Docket No. 2012-0629-MWD-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Thirty Thousand Dollars (\$30,000) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all Facility operational procedures are properly accomplished, including procedures for the prevention of the discharge of sewage sludge into water in the state, in accordance with TPDES Permit No. WQ001300001, Permit Conditions No. 2.d;

- b. Within 45 days, after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a, as described in Ordering Provision No. 3.h below;
- c. Within 45 days after the effective date of this Agreed Order, complete remediation of the receiving stream by removing and disposing of sludge and related materials (“removed materials”) from the impacted portions of the receiving stream. Disposal of any removed materials shall be carried out in accordance with all applicable rules of the TCEQ and in a manner that prevents the contamination of surface or groundwater. The Facility shall maintain written records of the location, nature and amount of each type of sludge or other deposits removed, the technique used for removal and transport, and the ultimate disposal site;
- d. Within 60 days, after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.c, as described in Ordering Provision No. 3.h below;
- e. Within 60 days after the effective date of this Agreed Order, develop and implement a solids management plan (“SMP”). The SMP shall outline a program of internal process control testing to monitor the efficiency of the wastewater treatment plant and to maintain the proper solids balance within the system. The plan shall be prepared by a Texas registered professional engineer. At a minimum, the plan shall include the following items:
 - i. A schedule for performing the following process control analyses and recommended ranges to be maintained: mixed liquor thirty-minute sludge settleability, mixed liquor suspended solids, mixed liquor dissolved oxygen concentration, clarifier sludge blanket depth, and residual chlorine concentration;
 - ii. Procedures outlining actions to be taken in the event that any of the above process control analyses fall outside the recommended range; and
 - iii. Specific sampling locations for the above stated process control measurements.Organized, written records of the process control analyses shall be maintained for a period of three years at the Facility in a daily log book and shall be made available to TCEQ representatives upon request.
- f. Within 75 days, after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.e, as described in Ordering Provision No. 3.h below;
- g. Within 120 days after the effective date of this Agreed Order, submit written certification of compliance all permit requirements of TPDES Permit No.

WQ0013000001, including specific corrective actions that were implemented at the Facility to achieve compliance with all permit requirements, including the prevention of the discharge of sewage sludge into water in the state, as described in Ordering Provision No. 3.h below. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with all permit requirements;

- h. The certifications required by Ordering Provision Nos. 3.b, 3.d, 3.f and 3.g 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 certifications 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

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

6/4/13

Date

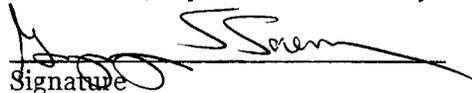
I, the undersigned, have read and understand the attached Agreed Order in the matter of Tall Timbers Utility Company, Inc. I am authorized to agree to the attached Agreed Order on behalf of Tall Timbers Utility Company, Inc., and do agree to the specified terms and conditions. I further acknowledge that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

I understand that by entering into this Agreed Order, Tall Timbers Utility Company, Inc. 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.


Signature

October 17, 2012
Date

GREGORY S. SORENSEN
Name (Printed or typed)
Authorized Representative of
Tall Timbers Utility Company, Inc.

Vice President / General Manager
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: 2012-0629-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Tall Timbers Utility Company, Inc.
Penalty Amount: Sixty Thousand Dollars (\$60,000)
SEP Amount: Thirty Thousand Dollars (\$30,000)
Type of SEP: Contribution to a Third-Party Pre-Approved SEP
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance
Location of SEP: Smith County; Neches and Sabine River Basins; Carrizo-Wilcox Aquifer

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 RC&D to be used for the 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.

b. Environmental Benefit

Tall Timbers Utility Company, Inc.
Agreed Order - Attachment A

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.

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

Tall Timbers Utility Company, Inc.
Agreed Order - Attachment A

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.