

Executive Summary – Enforcement Matter – Case No. 45066

City of Fredericksburg

RN101917383

Docket No. 2012-1944-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Fredericksburg WWTP, located approximately 0.5 mile southeast of Fredericksburg and immediately east of U.S. Highway 290, Gillespie 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: November 29, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,000

Amount Deferred for Expedited Settlement: \$3,600

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: \$14,400

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc.

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

**Executive Summary – Enforcement Matter – Case No. 45066
City of Fredericksburg
RN101917383
Docket No. 2012-1944-MWD-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: August 21, 2012
Date(s) of NOE(s): August 29, 2012

Violation Information

Failed to comply with permitted effluent limits for ammonia nitrogen and *E. coli* [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014969001, Effluent Limitations and Monitoring Requirements No. 1].

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. WQ0014969001, 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

Executive Summary – Enforcement Matter – Case No. 45066

City of Fredericksburg

RN101917383

Docket No. 2012-1944-MWD-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Heather Brister, Enforcement Division,
Enforcement Team 1, MC R-09, (254) 761-3034; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

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

Respondent: The Honorable Jeryl Hoover, Mayor, City of Fredericksburg, 126 West
Main Street, Fredericksburg, Texas 78624

Respondent's Attorney: N/A

Attachment A
Docket Number: 2012-1944-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Fredericksburg
Penalty Amount:	Fourteen Thousand Four Hundred Dollars (\$14,400)
SEP Amount:	Fourteen Thousand Four Hundred Dollars (\$14,400)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up
Location of SEP:	Gillespie County; Colorado River Basin; Edwards - Trinity Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset 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 amount to the Third-Party Administrator pursuant to the agreement between the Third-Party Administrator and the TCEQ. Specifically, the contribution will be used to provide local residents with a means of properly disposing household hazardous wastes such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers in one day collection events. SEP monies will be used to pay for the associated labor, materials, disposal, and administrative costs. Citizens will not be charged disposal fees. The project is administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations. 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

This SEP will provide a discernible environmental benefit by providing a means of properly disposing household hazardous waste which might otherwise be disposed of in storm drains, the sewage system, or other means detrimental to the environment.

c. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Administrator 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 Administrator. 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 Administrator. 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.

City of Fredericksburg
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

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of 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

TCEQ

DATES	Assigned	10-Sep-2012	Screening	24-Sep-2012	EPA Due	
	PCW	24-Jun-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Fredericksburg		
Reg. Ent. Ref. No.	RN101917383		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	45066	No. of Violations	2
Docket No.	2012-1944-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$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 **60.0%** Enhancement **Subtotals 2, 3, & 7** **\$6,750**

Notes: Enhancement for three months of self-reported effluent violations, one order with denial of liability, and one order without 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 **\$470**
 Approx. Cost of Compliance **\$7,500**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$18,000**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$18,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$18,000**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$3,600**

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$14,400**

Screening Date 24-Sep-2012

Docket No. 2012-1944-MWD-E

PCW

Respondent City of Fredericksburg

Policy Revision 3 (September 2011)

Case ID No. 45066

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101917383

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>)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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) 60%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for three months of self-reported effluent violations, one order with denial of liability, and one order without denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 60%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 60%

Screening Date 24-Sep-2012

Docket No. 2012-1944-MWD-E

PCW

Respondent City of Fredericksburg

Policy Revision 3 (September 2011)

Case ID No. 45066

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101917383

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. WQ0014969001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on August 21, 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

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 as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

30 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 September 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 \$470

Violation Final Penalty Total \$12,000

This violation Final Assessed Penalty (adjusted for limits) \$12,000

Economic Benefit Worksheet

Respondent City of Fredericksburg
Case ID No. 45066
Reg. Ent. Reference No. RN101917383
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
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)	\$7,500	30-Sep-2011	31-May-2013	1.67	\$626	n/a	\$626

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

\$7,500

TOTAL

\$626

Screening Date 24-Sep-2012

Docket No. 2012-1944-MWD-E

PCW

Respondent City of Fredericksburg

Policy Revision 3 (September 2011)

Case ID No. 45066

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101917383

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. WQ0014969001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on August 21, 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 ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant 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

90 Number of violation days

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

Violation Base Penalty \$3,750

One quarterly event is recommended for the quarter containing the months of February, March, and April 2012.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$6,000

This violation Final Assessed Penalty (adjusted for limits) \$6,000

Economic Benefit Worksheet

Respondent City of Fredericksburg
Case ID No. 45066
Reg. Ent. Reference No. RN101917383
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: City of Fredericksburg
 ID Number(s): TPDES Permit No. WQ0014969001
 Docket Number: 2012-1944-MWD-E

EFFLUENT PARAMETER				
Permit Limit				
	NH ₃ N Daily Avg. Conc. 2 mg/L	NH ₃ N Daily Avg. Loading 42 lbs/day	<i>E. coli</i> Daily Avg. Conc. 126 cfu/100 ml	<i>E. coli</i> Single Grab Conc. 394 cfu/100 ml
Month/Year				
September 2011	c	c	610	2,419
February 2012	2.7	c	c	c
March 2012	3.4	c	c	c
April 2012	6.3	52	c	c

Conc. - concentration

mg/L - milligrams per liter

NH₃N - Ammonia Nitrogen

Avg. - average

cfu - colony forming units/100 milliliters

c - compliant

E. coli - *Escherichia coli*

2 Effective Date: **02/20/2011** ADMINORDER 2010-0471-MWD-E (Findings Order-Agreed Order Without Denial)
 Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov:Effluent Limits PERMIT
 Description: Failure to comply with permit effluent limits for ammonia nitrogen, total suspended solids and 5-day carbonaceous biochemical oxygen demand as documented by a TCEQ record review of self-reported data.
 Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
 30 TAC Chapter 319, SubChapter A 319.1
 Rqmt Prov:Sludge Reporting Requirements PERMIT
 Description: Failure to submit sludge monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	July 18, 2008	(751383)
Item 2	September 02, 2008	(751384)
Item 3	September 18, 2008	(751385)
Item 4	October 17, 2008	(751387)
Item 5	November 17, 2008	(751389)
Item 6	December 22, 2008	(751391)
Item 7	January 16, 2009	(751393)
Item 8	March 12, 2009	(751392)
Item 9	March 23, 2009	(751378)
Item 10	October 14, 2009	(807308)
Item 11	November 09, 2009	(807309)
Item 12	December 07, 2009	(807310)
Item 13	April 15, 2011	(890790)
Item 14	May 06, 2011	(915532)
Item 15	September 16, 2011	(967651)
Item 16	November 17, 2011	(979701)
Item 17	December 13, 2011	(986555)
Item 18	January 06, 2012	(992935)
Item 19	February 16, 2012	(1000277)
Item 20	August 16, 2012	(1040367)
Item 21	September 10, 2012	(1049346)
Item 22	December 21, 2012	(1071115)
Item 23	January 17, 2013	(1083848)
Item 24	February 26, 2013	(1083847)
Item 25	April 08, 2013	(1098005)

E. Written notices of violations (NOV) (CEEDS 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: **06/30/2012** (1033808) CN600527238
 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

2 Date: **09/30/2012** (1071113) CN600527238
 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

3

Date: **10/31/2012** (1071114)

CN600527238

Self Report? YES

Classification: Moderate

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

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

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Addendum to Compliance History Federal Enforcement Actions

Reg Entity Name: CITY OF FREDERICKSBURG -WWTP

Reg Entity Add: 1460 EAST MAIN ST US HWY 290E

Reg Entity City: FREDERICKSBURG

Reg Entity No: RN101917383

Customer Name: CITY OF FREDERICKSBURG -WWTP

Customer No: CN600527238

EPA Case No: 06-2009-N009

Order Issue Date (yyyymmdd): 20090316

Case Result: Final Administrative Order

Statute: CWA

Sect of Statute: 309A

Classification: Minor

Program: NPDES - Stormwater

Citation:

Violation Type:

Cite Sect:

Cite Part:

Enforcement Action: Administrative Penalty Order

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF FREDERICKSBURG
RN101917383**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2012-1944-MWD-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Fredericksburg ("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 together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant located approximately 0.5 mile southeast of Fredericksburg and immediately east of United States Highway 290 in Gillespie County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 3, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eighteen Thousand Dollars (\$18,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fourteen Thousand Four Hundred Dollars (\$14,400) of the

administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP") and Three Thousand Six Hundred Dollars (\$3,600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with 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. WQ0014969001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on August 21, 2012 and shown in the table below:

EFFLUENT PARAMETER				
Permit Limit				
	NH ₃ N Daily Avg. Conc. 2 mg/L	NH ₃ N Daily Avg. Loading 42 lbs/day	<i>E. coli</i> Daily Avg. Conc. 126 cfu/100 ml	<i>E. coli</i> Single Grab Conc. 394 cfu/100 ml
Month/Year				
September 2011	c	c	610	2,419
February 2012	2.7	c	c	c
March 2012	3.4	c	c	c
April 2012	6.3	52	c	c

Conc. - concentration cfu - colony forming units/100 milliliters
 mg/L - milligrams per liter c - compliant
 NH₃N - Ammonia Nitrogen *E. coli* - *Escherichia coli*
 Avg. - average

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: the City of Fredericksburg, Docket No. 2012-1944-MWD-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Fourteen Thousand Four Hundred Dollars (\$14,400) 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. WQ0014969001, 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
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes

aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/28/14

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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



Signature

10/21/13

Date

Jeany Hoover

Name (Printed or typed)
Authorized Representative of
City of Fredericksburg

Mayer

Title

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

Attachment A
Docket Number: 2012-1944-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Fredericksburg
Penalty Amount:	Fourteen Thousand Four Hundred Dollars (\$14,400)
SEP Amount:	Fourteen Thousand Four Hundred Dollars (\$14,400)
Type of SEP:	Contribution to a Pre-Approved Third-Party Administrator
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Household Hazardous Waste Clean-Up
Location of SEP:	Gillespie County; Colorado River Basin; Edwards - Trinity Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset 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 amount to the Third-Party Administrator pursuant to the agreement between the Third-Party Administrator and the TCEQ. Specifically, the contribution will be used to provide local residents with a means of properly disposing household hazardous wastes such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers in one day collection events. SEP monies will be used to pay for the associated labor, materials, disposal, and administrative costs. Citizens will not be charged disposal fees. The project is administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations. 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

This SEP will provide a discernible environmental benefit by providing a means of properly disposing household hazardous waste which might otherwise be disposed of in storm drains, the sewage system, or other means detrimental to the environment.

c. Minimum Expenditure

Respondent shall contribute at least the SEP amount to the Third-Party Administrator 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 Administrator. 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 Administrator. 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.

City of Fredericksburg
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

Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of 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.