

Executive Summary – Enforcement Matter – Case No. 50662

McWane, Inc.

RN102679867

Docket No. 2015-0895-IWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Tyler Pipe, north of the intersection of, and between, United States Highway 69 and Jim Hogg Highway (old Lindale Highway) Swan, Smith County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 9, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$28,800

Amount Deferred for Expedited Settlement: \$5,760

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$11,520

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$11,520

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: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 15, 2015

Date(s) of NOE(s): May 27, 2015

**Executive Summary – Enforcement Matter – Case No. 50662
McWane, Inc.
RN102679867
Docket No. 2015-0895-IWD-E**

Violation Information

Failed to comply with permitted effluent limitations [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001793000, Effluent Limitations and Monitoring Requirements No. 1, Outfall Nos. 001 and 004]

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a SEP (See SEP Attachment A).
2. The Order will also require the Respondent to within 90 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0001793000 demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: James Boyle, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2527; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

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

Respondent: Greg Simmons, North Plant - Assistant General Manager, McWane, Inc., 11910 County Road 492, Tyler, Texas 75706

Respondent's Attorney: N/A

Attachment A
Docket Number: 2015-0895-IWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	McWane, Inc.
Penalty Amount:	Twenty-Three Thousand Forty Dollars (\$23,040)
SEP Offset Amount:	Eleven Thousand Five Hundred Twenty Dollars (\$11,520)
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc.
Project Name:	<i>Cleanup of Unauthorized Trash Dumpsites</i>
Location of SEP:	Smith County - Neches River Basin, 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 the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset 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

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”)** for the *Cleanup of Unauthorized Trash Dumpsites*. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to coordinate with city and county government officials and private entities (“Partner Entities”) to clean up sites where trash, tires, or other materials have been illegally disposed of (the “Project”).

The Third-Party Administrator shall ensure that collected debris and waste is properly transported to and disposed of at an authorized disposal facility. If a licensed hauler is needed for tires or other waste collected from sites, the Third-Party Administrator shall ensure that only properly licensed haulers are used for transport and disposal of tires and other waste. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

McWane, Inc.
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP shall rid communities of the dangers and health threats associated with non-regulated dumping and will provide removal of waste that contaminates air, soil, and water, and harbors disease-carrying animals and insects.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Texas Association of RC&D SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of RC&D Areas, Inc.
Attn.: Jerry Pearce, Executive Director
P.O. Box 2533
Victoria, Texas 77902

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

McWane, Inc.
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount, as described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the Project, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality"; and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. **Publicity**

Any public statements concerning this SEP and/or project, made by or on behalf of the 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. **Recognition**

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

McWane, Inc.
Agreed Order - Attachment A

7. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for the 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 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	1-Jun-2015			
	PCW	17-Jun-2015	Screening	8-Jun-2015	EPA Due 5-Sep-2015

RESPONDENT/FACILITY INFORMATION					
Respondent	McWane, Inc.				
Reg. Ent. Ref. No.	RN102679867				
Facility/Site Region	5-Tyler	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	50662	No. of Violations	1		
Docket No.	2015-0895-IWD-E	Order Type	1660		
Media Program(s)	Water Quality	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	James Boyle		
		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	\$15,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	92.0% Enhancement	Subtotals 2, 3, & 7	\$13,800
Notes	Enhancement for four months of self-reported effluent violations, one NOV with dissimilar violations, two Agreed Orders with denial of liability, and one consent decree.		
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	\$953		
Estimated Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount	
SUM OF SUBTOTALS 1-7		Final Subtotal	\$28,800
OTHER FACTORS AS JUSTICE MAY REQUIRE		0.0% Adjustment	\$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
Notes			
Final Penalty Amount			\$28,800
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$28,800
DEFERRAL		20.0% Reduction Adjustment	-\$5,760
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$23,040

Screening Date 8-Jun-2015
Respondent McWane, Inc.
Case ID No. 50662
Reg. Ent. Reference No. RN102679867
Media [Statute] Water Quality
Enf. Coordinator James Boyle

Docket No. 2015-0895-IWD-E

PCW

Policy Revision 4 (April 2014)
 PCW Revision March 26, 2014

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	4	20%
	Other written NOVs	1	2%
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 judgments or consent decrees meeting criteria</i>)	1	30%
	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%

Please Enter Yes or No

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) 92%

>> **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 four months of self-reported effluent violations, one NOV with dissimilar violations, two Agreed Orders with denial of liability, and one consent decree.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 92%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 92%

Screening Date 8-Jun-2015
Respondent McWane, Inc.
Case ID No. 50662
Reg. Ent. Reference No. RN102679867
Media [Statute] Water Quality
Enf. Coordinator James Boyle

Docket No. 2015-0895-IWD-E

PCW

Policy Revision 4 (April 2014)
 PCW Revision March 26, 2014

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. WQ0001793000, Effluent Limitations and Monitoring Requirements No. 1, Outfall Nos. 001 and 004

Violation Description Failed to comply with permitted effluent limitations, as documented during a record review conducted on May 15, 2015, and shown in the attached effluent violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	15.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

A simplified model was used to evaluate carbonaceous biochemical oxygen demand (5-day) to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Oil and grease was also considered. 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 as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$15,000

Four quarterly events are recommended (three quarters for Outfall No. 1 and one quarter for Outfall No. 004).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$953

Violation Final Penalty Total \$28,800

This violation Final Assessed Penalty (adjusted for limits) \$28,800

Economic Benefit Worksheet

Respondent McWane, Inc.
Case ID No. 50662
Reg. Ent. Reference No. RN102679867
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
<i>No commas or \$</i>							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	31-May-2014	26-Apr-2016	1.91	\$953	n/a	\$953

Notes for DELAYED costs Estimated cost to determine the cause of noncompliance and make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance and the final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	TOTAL	\$953
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McWane, Inc.
Docket No. 2015-0895-IWD-E
TPDES Permit No. WQ0001793000

Effluent Parameter Violation Table

Monitoring Period	Outfall 001	Outfall 004
	CBOD₅	Oil and Grease
	Daily Avg. Conc.	Daily Max Conc.
	Limit = 12 mg/L	Limit = 15 mg/L
May 2014	c	30.9
October 2014	14.61	c
November 2014	16.87	c
February 2015	21.84	c
March 2015	15.28	c

mg/L = milligrams per liter

CBOD₅ = carbonaceous biochemical oxygen demand (5-day)

Avg. = average

Max = maximum

c = compliant

Conc. = concentration

Addendum to Compliance History Federal Enforcement Actions

Reg Entity Name: TYLER PIPE COMPANY

Reg Entity Add: HWY. 69, 4 MILES N. OF LOOP 323

Reg Entity City: TYLER

Reg Entity No: RN102679867

EPA Case No: 06-2009-3400

Order Issue Date (yyyymmdd): 20100920

Case Result: Final Order With Penalty

Statute: CAA

Sect of Statute: 112D

Classification: Major

Program: Gen Hazardous Waste M **Citation:**

Violation Type: SIP - A1 Source

Cite Sect:

Cite Part:

Enforcement Action: Non-Lead Participant

The TCEQ is committed to accessibility.

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



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN602243313, RN102679867, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent: CN602243313, McWane, Inc. **Classification:** SATISFACTORY **Rating:** 6.04
or Owner/Operator

Regulated Entity: RN102679867, TYLER PIPE **Classification:** SATISFACTORY **Rating:** 5.49
Complexity Points: 35
Repeat Violator: NO
CH Group: 14 – Other
Location: north of the intersection of, and between, United States Highway 69 and Jim Hogg Highway (old Lindale Highway) in Swan, Smith County, Texas 75706
TCEQ Region: REGION 05 - TYLER

ID Number(s):

AIR OPERATING PERMITS
AIR OPERATING PERMITS
POLLUTION PREVENTION PLANNING
WASTEWATER
WASTEWATER
PETROLEUM STORAGE TANK REGISTRATION

ACCOUNT NUMBER SK0041T
PERMIT 1407
ID NUMBER P00738
PERMIT WQ0001793000
EPA ID TX0001465
REGISTRATION 42476

AIR NEW SOURCE PERMITS PERMIT 4073
AIR NEW SOURCE PERMITS REGISTRATION 10569
AIR NEW SOURCE PERMITS REGISTRATION 14118
AIR NEW SOURCE PERMITS REGISTRATION 17175
AIR NEW SOURCE PERMITS REGISTRATION 23973
AIR NEW SOURCE PERMITS REGISTRATION 49603
AIR NEW SOURCE PERMITS REGISTRATION 52208
AIR NEW SOURCE PERMITS REGISTRATION 76209
AIR NEW SOURCE PERMITS AFS NUM 4842300004
AIR NEW SOURCE PERMITS REGISTRATION 71019
AIR NEW SOURCE PERMITS REGISTRATION 74795
AIR NEW SOURCE PERMITS REGISTRATION 81113
AIR NEW SOURCE PERMITS REGISTRATION 81413
AIR NEW SOURCE PERMITS REGISTRATION 95324
AIR NEW SOURCE PERMITS REGISTRATION 128526

AIR NEW SOURCE PERMITS PERMIT 7512
AIR NEW SOURCE PERMITS REGISTRATION 11209
AIR NEW SOURCE PERMITS REGISTRATION 15584
AIR NEW SOURCE PERMITS REGISTRATION 23831
AIR NEW SOURCE PERMITS REGISTRATION 41902
AIR NEW SOURCE PERMITS ACCOUNT NUMBER SK0041T
AIR NEW SOURCE PERMITS REGISTRATION 52302
AIR NEW SOURCE PERMITS REGISTRATION 76210
AIR NEW SOURCE PERMITS PERMIT 70403
AIR NEW SOURCE PERMITS REGISTRATION 54117
AIR NEW SOURCE PERMITS REGISTRATION 78855
AIR NEW SOURCE PERMITS REGISTRATION 80981
AIR NEW SOURCE PERMITS REGISTRATION 82313
AIR NEW SOURCE PERMITS REGISTRATION 111710
AIR NEW SOURCE PERMITS REGISTRATION 117081

PUBLIC WATER SYSTEM/SUPPLY
IHW CORRECTIVE ACTION
AIR EMISSIONS INVENTORY
INDUSTRIAL AND HAZARDOUS WASTE
INDUSTRIAL AND HAZARDOUS WASTE
INDUSTRIAL AND HAZARDOUS WASTE
STORMWATER
STORMWATER

REGISTRATION2120023
SOLID WASTE REGISTRATION # (SWR) 30140
ACCOUNT NUMBER SK0041T
PERMIT 50141
EPA ID TXD066349770
SOLID WASTE REGISTRATION # (SWR) 30140
PERMIT TXR05AK19
PERMIT TXR05AV56

Compliance History Period: September 01, 2009 to August 31, 2014
Rating Year: 2014
Rating Date: 09/01/2014
Date Compliance History Report Prepared: June 03, 2015
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: June 03, 2010 to June 03, 2015

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

Name: James Boyle

Phone: (512) 239-2527

Site and Owner/Operator History:

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 for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES , when did the change(s) in owner or operator occur? | N/A |

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

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

- 1 Effective Date: 12/04/2010 ADMINORDER 2010-0620-AIR-E (1660 Order-Agreed Order With Denial)
- Classification: Moderate
- Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
- Rqmt Prov: FOP No. O-01407, General Terms and Cond. OP
 FOP No. O-01407, Special Condition 7 OP
 NSR Permit No. 70403 PERMIT
- Description: Failed to comply with permitted emissions limits of 11.87 pounds per hour ("lbs/hr") of non-methane/non-ethane VOCs from the Fittings Casting/Cooling, Shell Core, Change Handling - South Stack, EPN E2-5-3. Specifically, during stack tests conducted October 15, 2008 and November 13, 2008, emissions were 35.65 lbs/hr and 58.42 lbs/hr, respectively.
- Classification: Moderate
- Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
- Rqmt Prov: FOP No. O-01407 OP
 NSR Permit No. 70403 PERMIT
- Description: Failed to comply with permitted emissions limits of 8.48 lbs/hr of non-methane/ non-ethane VOCs from the 40 Ton Furnace Baghouse exhaust, EPN E1-5-3. Specifically, during a stack test conducted October 14 and 15, 2008, emissions were 11.85 lbs/hr.
- Classification: Moderate
- Citation: 30 TAC Chapter 116, SubChapter B 116.115(b)(2)(F)
 30 TAC Chapter 116, SubChapter B 116.115(c)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 5C THSC Chapter 382 382.085(b)
- Rqmt Prov: FOP No. O-01407 OP
 NSR Permit No. 70403 PERMIT
- Description: Failed to comply with permitted emissions limits of 0.78 lbs/hr of PM from the New Pipe Machine Regenerative Thermal Oxidizer Outlet Stack exhaust, EPN E1-43-3. Specifically, during a stack test conducted October 14 and 15, 2008, emissions were 0.81 lbs/hr.
- Classification: Minor
- Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
 30 TAC Chapter 122, SubChapter B 122.145(2)(A)
 5C THSC Chapter 382 382.085(b)
- Rqmt Prov: FOP No. O-01407 OP
- Description: Failed to report three deviations on the May 18, 2008 to November 18, 2008 semi-annual deviation report, and consequently failed to certify the deviations in the May 18, 2008 to May 17, 2009 annual compliance certification
- 2 Effective Date: 06/27/2013 ADMINORDER 2012-2063-IWD-E (1660 Order-Agreed Order With Denial)
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
 30 TAC Chapter 305, SubChapter F 305.125(1)
- Rqmt Prov: Effluent Limits PERMIT
- Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.
- Classification: Moderate
- Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 319, SubChapter A 319.4
- Rqmt Prov: effluent Limits Outfall No. 001 PERMIT
- Description: Failure to collect and analyze samples for total cyanide, total sulfate, total cadmium, and total dissolved solids for the annual monitoring period ending August 31, 2011, as documented by a TCEQ record review.

See addendum for information regarding federal actions.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	June 17, 2010	(846192)
Item 2	July 21, 2010	(841150)
Item 3	August 23, 2010	(866754)
Item 4	September 20, 2010	(873826)
Item 5	November 10, 2010	(881431)
Item 6	November 22, 2010	(877834)
Item 7	November 29, 2010	(877754)
Item 8	December 08, 2010	(887961)
Item 9	January 03, 2011	(886831)
Item 10	March 22, 2011	(916270)
Item 11	April 25, 2011	(952547)
Item 12	May 31, 2011	(937950)
Item 13	September 12, 2011	(952523)
Item 14	September 21, 2011	(965231)
Item 15	October 21, 2011	(971301)
Item 16	November 21, 2011	(977458)
Item 17	December 19, 2011	(984229)
Item 18	January 23, 2012	(990523)
Item 19	February 21, 2012	(997891)
Item 20	March 21, 2012	(1003405)
Item 21	May 17, 2012	(1016368)
Item 22	July 17, 2012	(1031490)
Item 23	September 19, 2012	(1046585)
Item 24	October 16, 2012	(1037355)
Item 25	October 24, 2012	(1041673)
Item 26	November 09, 2012	(1043664)
Item 27	December 19, 2012	(1060626)
Item 28	February 19, 2013	(1078812)
Item 29	March 19, 2013	(1089229)
Item 30	April 16, 2013	(1095622)
Item 31	May 17, 2013	(1106548)
Item 32	June 17, 2013	(1110225)
Item 33	July 16, 2013	(1117104)
Item 34	August 19, 2013	(1124862)
Item 35	August 21, 2013	(1114826)
Item 36	October 11, 2013	(1135193)
Item 37	November 19, 2013	(1140595)
Item 38	December 16, 2013	(1147050)
Item 39	January 15, 2014	(1153122)
Item 40	February 18, 2014	(1160456)
Item 41	March 11, 2014	(1167103)
Item 42	April 15, 2014	(1174236)
Item 43	May 12, 2014	(1180424)
Item 44	July 16, 2014	(1198392)
Item 45	August 18, 2014	(1198393)
Item 46	September 10, 2014	(1205729)
Item 47	October 17, 2014	(1212136)
Item 48	January 20, 2015	(1230699)
Item 49	February 17, 2015	(1242208)

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

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

1	Date: 10/31/2014 (1218386)	CN602243313	
	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: 11/30/2014 (1224171)	CN602243313	
	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: 12/16/2014 (1209876)	CN602243313	
	Self Report? NO		Classification: Minor
	Citation: 30 TAC Chapter 113, SubChapter C 113.100 30 TAC Chapter 113, SubChapter C 113.1130 30 TAC Chapter 122, SubChapter B 122.143(4) 40 CFR Chapter 63, SubChapter C, PT 63, SubPT A 63.9(b)(2) 5C THSC Chapter 382 382.085(b) STC 6 PERMIT		
	Description: Failure to submit an Initial Notification for process heaters subject to 40 CFR 63, Subpart DDDDD.		
4	Date: 02/28/2015 (1248540)	CN602243313	
	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		
5	Date: 03/31/2015 (1255435)	CN602243313	
	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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MCWANE, INC.
RN102679867

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-0895-IWD-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 McWane, Inc. ("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 facility located north of the intersection of, and between, United States Highway 69 and Jim Hogg Highway (old Lindale Highway) in Swan, Smith County, Texas (the "Facility").
2. The Respondent has discharged industrial 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 June 1, 2015.
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 Twenty-Eight Thousand Eight Hundred Dollars (\$28,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand Five Hundred

Twenty Dollars (\$11,520) of the administrative penalty and Five Thousand Seven Hundred Sixty Dollars (\$5,760) 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. Eleven Thousand Five Hundred Twenty Dollars (\$11,520) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP")."

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 limitations, 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. WQ0001793000, Effluent Limitations and Monitoring Requirements No. 1, Outfall Nos. 001 and 004, as documented during a record review conducted on May 15, 2015, and shown in the effluent violation table below:

Effluent Parameter Violation Table		
Monitoring Period	Outfall 001	Outfall 004
	CBOD ₅	Oil and Grease
	Daily Avg. Conc.	Daily Max Conc.
	Limit = 12 mg/L	Limit = 15 mg/L
May 2014	c	30.9
October 2014	14.61	c
November 2014	16.87	c
February 2015	21.84	c
March 2015	15.28	c

mg/L = milligrams per liter

CBOD₅ = carbonaceous biochemical oxygen demand (5-day)

Avg. = average

Max = maximum

c = compliant

Conc. = concentration

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: McWane, Inc., Docket No. 2015-0895-IWD-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, Eleven Thousand Five Hundred Twenty Dollars (\$11,520) of the assessed administrative penalty shall be offset

with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty 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 permitted effluent limitations of TPDES Permit No. WQ0001793000, 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 include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
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. 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Ramon Moreno Jr.
For the Executive Director

1/8/16
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.

Greg Simmons
Signature

9-8-15
Date

GREG SIMMONS
Name (Printed or typed)
Authorized Representative of
McWane, Inc.

Asst. Gen. Mgr.
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: 2015-0895-IWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	McWane, Inc.
Penalty Amount:	Twenty-Three Thousand Forty Dollars (\$23,040)
SEP Offset Amount:	Eleven Thousand Five Hundred Twenty Dollars (\$11,520)
Type of SEP:	Contribution to a Third-Party Pre-Approved SEP
Third-Party Administrator:	Texas Association of Resource Conservation and Development Areas, Inc.
Project Name:	<i>Cleanup of Unauthorized Trash Dumpsites</i>
Location of SEP:	Smith County - Neches River Basin, 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 the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset 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

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. (“RC&D”)** for the *Cleanup of Unauthorized Trash Dumpsites*. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to coordinate with city and county government officials and private entities (“Partner Entities”) to clean up sites where trash, tires, or other materials have been illegally disposed of (the “Project”).

The Third-Party Administrator shall ensure that collected debris and waste is properly transported to and disposed of at an authorized disposal facility. If a licensed hauler is needed for tires or other waste collected from sites, the Third-Party Administrator shall ensure that only properly licensed haulers are used for transport and disposal of tires and other waste. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

McWane, Inc.
Agreed Order - Attachment A

All dollars contributed will be used solely for the direct cost of the Project, including but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director ("ED"), be applied to another pre-approved SEP.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

b. Environmental Benefit

This SEP shall rid communities of the dangers and health threats associated with non-regulated dumping and will provide removal of waste that contaminates air, soil, and water, and harbors disease-carrying animals and insects.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **Texas Association of RC&D SEP** and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of RC&D Areas, Inc.
Attn.: Jerry Pearce, Executive Director
P.O. Box 2533
Victoria, Texas 77902

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

McWane, Inc.
Agreed Order - Attachment A

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount, as described in Sections 2 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the Project, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP; shall make the check payable to "Texas Commission on Environmental Quality"; and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the 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. Recognition

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

McWane, Inc.
Agreed Order - Attachment A

7. Other SEPs by TCEQ or Other Agencies

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