

Executive Summary – Enforcement Matter – Case No. 50126
City of Cleburne
RN101721579
Docket No. 2015-0284-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Cleburne WWTP, 1801 Park Boulevard with an associated collection system manhole located at Marengo Street and Buffalo Creek, Cleburne, Johnson County

Type of Operation:

Wastwater treatment system with an associated collection system manhole

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: November 27, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$5,625

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$5,625

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc. (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 50126
City of Cleburne
RN101721579
Docket No. 2015-0284-MWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: December 11, 2014
Date(s) of NOE(s): February 9, 2015

Violation Information

Failed to prevent an unauthorized discharge of wastewater from a collection system into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(4), and Texas Pollutant Discharge Elimination System Permit No. WQ0010006001, Permit Conditions No. 2.g.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. By December 9, 2014:
 - i. Ceased the unauthorized discharge; and
 - ii. Contained the unauthorized discharge in Buffalo Creek with a berm installed 0.212 mile downstream at Poindexter Street, where the unauthorized discharge was pumped into an unaffected portion of the collection system.
- b. By December 10, 2014, ceased the unauthorized discharge of wastewater by clearing the collection line of debris, removing and properly disposing of trash and solids from the affected areas, and removing and properly disposing of the dead fish.
- c. By December 11, 2014, disinfected the affected areas and flushed the creek with fresh water to remove residual solids from the unauthorized discharge.

Technical Requirements:

The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).

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. 50126
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Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Had Darling, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2520; Melissa Cordell, Enforcement Division,
MC 219, (512) 239-2483

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

Respondent: Dan O’Leary, City Manager, City of Cleburne, P.O. Box 677, Cleburne,
Texas 76033

The Honorable Scott Cain, Mayor, City of Cleburne, P.O. Box 677, Cleburne, Texas
76033

Respondent's Attorney: N/A

Attachment A
Docket Number: 2015-0284-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Cleburne
Penalty Amount:	Five Thousand Six Hundred Twenty-Five Dollars (\$5,625)
SEP Offset Amount:	Five Thousand Six Hundred Twenty-Five Dollars (\$5,625)
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>Household Hazardous Waste Collection</i>
Location of SEP:	Johnson County: Brazos River Basin, Trinity Aquifer

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset 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 *Household Hazardous Waste (“HHW”) Collection* project. 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 (collectively known as “Partner Entities”) to conduct events for residents to bring in HHW such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers for proper disposal (the “Project”). Where possible, the Project may also offer electronics collection, disposal, and recycling. The Third-Party Administrator shall work with Partner Entities to determine exactly which materials will be accepted and how they will be disposed of or recycled.

The Third-Party Administrator shall ensure that individuals qualified to make determinations regarding receiving, handling, and temporarily storing HHW are present at each event. Third-Party Administrator shall use only licensed haulers and authorized disposal sites.

City of Cleburne
Agreed Order - Attachment A

The Third-Party Administrator shall ensure that, at least 45 days before each Collection Event, Form TCEQ-20459 Notification for a Household Hazardous Waste Collection Event, as may be amended, is submitted to TCEQ in accordance with Chapter 335, Texas Administrative Code. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used 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 made 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 will provide a means of properly disposing of HHW which might otherwise be disposed of in regular landfills, storm drains, sewer systems, or other means detrimental to the environment. This SEP will provide assistance to help rid communities of the dangers and health threats associated with HHW, and will provide for proper and protective disposal or recycling of collected materials.

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:

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.

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

TCEQ

DATES	Assigned	9-Feb-2015	Screening	18-Feb-2015	EPA Due	
	PCW	20-May-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Cleburne
Reg. Ent. Ref. No.	RN101721579
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	50126	Order Type	Findings
Docket No.	2015-0284-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Jennifer Graves
Multi-Media		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** **\$7,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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** **-\$1,875**

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

Total EB Amounts: \$2
 Estimated Cost of Compliance: \$7,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,625**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$5,625**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$5,625**

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 **\$5,625**

Screening Date 18-Feb-2015

Docket No. 2015-0284-MWD-E

PCW

Respondent City of Cleburne

Policy Revision 4 (April 2014)

Case ID No. 50126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101721579

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

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>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments 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%

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) 0%

>> 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

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 18-Feb-2015

Docket No. 2015-0284-MWD-E

PCW

Respondent City of Cleburne

Policy Revision 4 (April 2014)

Case ID No. 50126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101721579

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(4), and Texas Pollutant Discharge Elimination System Permit No. WQ0010006001, Permit Conditions No. 2.g.

Violation Description

Failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state, as documented during the investigation conducted on December 11, 2014. Specifically, on December 9, 2014, a blockage in the collection system located at Marengo Street and Buffalo Creek caused approximately 55,000 gallons of wastewater to discharge from a manhole. The discharge flowed directly into Buffalo Creek, which resulted in a fish kill of approximately 40 fish.

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 that exceed levels protective of human health and environmental receptor as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

2 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 from the date the unauthorized discharge occurred (December 9, 2014) to the compliance date (December 11, 2014).

Good Faith Efforts to Comply

25.0%

Reduction \$1,875

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent achieved compliance on December 11, 2014.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$5,625

This violation Final Assessed Penalty (adjusted for limits) \$5,625

Economic Benefit Worksheet

Respondent City of Cleburne
Case ID No. 50126
Reg. Ent. Reference No. RN101721579
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
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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	\$7,500	9-Dec-2014	11-Dec-2014	0.01	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to cease the unauthorized discharge of wastewater, clear the collection line of debris, remove and properly dispose of trash and solids from the affected areas, remove and properly dispose of the dead fish, disinfect the affected areas, dam the creek and pump the wastewater from the creek to the collection line, and flush the creek with fresh water. Date required is the date the unauthorized discharge began. Final date is the 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

\$2

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 CN600241392, RN101721579, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600241392, City of Cleburne **Classification:** SATISFACTORY **Rating:** 1.19

Regulated Entity: RN101721579, CITY OF CLEBURNE WASTEWATER TREATMENT PLANT **Classification:** SATISFACTORY **Rating:** 0.50

Complexity Points: 13 **Repeat Violator:** NO

CH Group: 08 - Sewage Treatment Facilities

Location: Located at 1801 Park Boulevard with an associated collection system manhole located at Marengo Street and Buffalo Creek, in Cleburne, Johnson County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):	WASTEWATER AUTHORIZATION	R10006001	WASTEWATER PERMIT	WQ0010006001
	WASTEWATER EPA ID	TX0047155	PRETREATMENT PERMIT	WQ0010006001
	PRETREATMENT EPA ID	TX0047155000	STORMWATER PERMIT	TXR05T765
	WASTEWATER LICENSING LICENSE	WQ0010006001	SLUDGE AUTHORIZATION	720019

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: March 25, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 25, 2010 to March 25, 2015

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

Name: Heather Brister **Phone:** (817) 588-5825

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:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A

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

Item 1	May 07, 2010	(832462)
Item 2	June 11, 2010	(926584)
Item 3	June 30, 2010	(926585)
Item 4	August 06, 2010	(926583)
Item 5	September 19, 2010	(874457)
Item 6	October 04, 2010	(926586)
Item 7	October 19, 2010	(882039)
Item 8	November 18, 2010	(888508)
Item 9	December 19, 2010	(896844)
Item 10	January 14, 2011	(902807)
Item 11	February 17, 2011	(909645)
Item 12	March 20, 2011	(916867)
Item 13	April 19, 2011	(926582)
Item 14	May 09, 2011	(938580)
Item 15	June 08, 2011	(945952)
Item 16	July 19, 2011	(953207)
Item 17	August 17, 2011	(959848)
Item 18	September 19, 2011	(965889)
Item 19	October 18, 2011	(971931)
Item 20	November 09, 2011	(978097)
Item 21	December 16, 2011	(984867)
Item 22	January 17, 2012	(991156)
Item 23	February 08, 2012	(998521)
Item 24	March 11, 2012	(1004054)
Item 25	April 19, 2012	(1010618)
Item 26	May 08, 2012	(1016994)
Item 27	June 18, 2012	(1024754)
Item 28	July 10, 2012	(1032114)
Item 29	August 14, 2012	(1038541)
Item 30	September 11, 2012	(1047400)
Item 31	November 12, 2012	(1063615)
Item 32	December 17, 2012	(1063617)
Item 33	January 19, 2013	(1080178)
Item 34	February 11, 2013	(1080177)
Item 35	March 11, 2013	(1089880)
Item 36	April 05, 2013	(1096273)
Item 37	May 14, 2013	(1107219)
Item 38	June 18, 2013	(1110866)
Item 39	July 16, 2013	(1117754)
Item 40	August 12, 2013	(1125543)
Item 41	September 20, 2013	(1130111)
Item 42	October 13, 2013	(1135861)
Item 43	November 19, 2013	(1141254)
Item 44	December 18, 2013	(1147719)
Item 45	January 22, 2014	(1153770)
Item 46	February 18, 2014	(1161103)
Item 47	March 17, 2014	(1167759)
Item 48	April 15, 2014	(1174885)
Item 49	May 19, 2014	(1181084)
Item 50	June 16, 2014	(1187988)
Item 51	July 14, 2014	(1199485)
Item 52	July 22, 2014	(1183694)
Item 53	September 16, 2014	(1206376)
Item 54	September 22, 2014	(1199486)
Item 55	October 15, 2014	(1212784)
Item 56	November 17, 2014	(1219039)
Item 57	December 19, 2014	(1224821)
Item 58	January 15, 2015	(1231541)

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.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF CLEBURNE
RN101721579

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-0284-MWD-E

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

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment system located at 1801 Park Boulevard with an associated collection system manhole located at Marengo Street and Buffalo Creek, in Cleburne, Johnson County, Texas (the "Site").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on December 11, 2014, TCEQ staff documented that on December 9, 2014, a blockage in the collection system located at Marengo Street and Buffalo Creek caused approximately 55,000 gallons of wastewater to discharge from a manhole. The discharge flowed directly into Buffalo Creek, which resulted in a fish kill of approximately 40 fish.
4. The Respondent received notice of the violations on February 18, 2015.
5. The Executive Director recognizes that the Respondent has implemented the following:
 - a. By December 9, 2014:
 - i. Ceased the unauthorized discharge; and
 - ii. Contained the unauthorized discharge in Buffalo Creek with a berm installed 0.212 mile downstream at Poindexter Street, where the unauthorized discharge was pumped into an unaffected portion of the collection system.
 - b. By December 10, 2014, ceased the unauthorized discharge of wastewater by clearing the collection line of debris, removing and properly disposing of trash and solids from the affected areas, and removing and properly disposing of the dead fish.
 - c. By December 11, 2014, disinfected the affected areas and flushed the creek with fresh water to remove residual solids from the unauthorized discharge.

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 an unauthorized discharge of wastewater from a collection system into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(4), and Texas Pollutant Discharge Elimination System Permit No. WQ0010006001, Permit Conditions No. 2.g.
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 Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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. Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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 Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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: the City of Cleburne, Docket No. 2015-0284-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 the SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Five Thousand Six Hundred Twenty-Five Dollars (\$5,625) 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. 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 Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. 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


For the Executive Director

3/25/16
Date

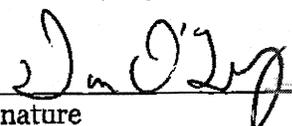
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Cleburne. I am authorized to agree to the attached Agreed Order on behalf of the City of Cleburne, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting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

I understand that by entering into this Agreed Order, the City of Cleburne 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

9/23/15
Date

DAN O'LEARY
Name (Printed or typed)
Authorized Representative of
City of Cleburne

CITY MANAGER
Title

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

Attachment A
Docket Number: 2015-0284-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Cleburne
Penalty Amount:	Five Thousand Six Hundred Twenty-Five Dollars (\$5,625)
SEP Offset Amount:	Five Thousand Six Hundred Twenty-Five Dollars (\$5,625)
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>Household Hazardous Waste Collection</i>
Location of SEP:	Johnson County: Brazos River Basin, Trinity Aquifer

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset 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 *Household Hazardous Waste ("HHW") Collection* project. 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 (collectively known as "Partner Entities") to conduct events for residents to bring in HHW such as paint, thinners, pesticides, oil and gas, corrosive cleaners, and fertilizers for proper disposal (the "Project"). Where possible, the Project may also offer electronics collection, disposal, and recycling. The Third-Party Administrator shall work with Partner Entities to determine exactly which materials will be accepted and how they will be disposed of or recycled.

The Third-Party Administrator shall ensure that individuals qualified to make determinations regarding receiving, handling, and temporarily storing HHW are present at each event. Third-Party Administrator shall use only licensed haulers and authorized disposal sites.

City of Cleburne
Agreed Order - Attachment A

The Third-Party Administrator shall ensure that, at least 45 days before each Collection Event, Form TCEQ-20459 Notification for a Household Hazardous Waste Collection Event, as may be amended, is submitted to TCEQ in accordance with Chapter 335, Texas Administrative Code. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

All dollars contributed will be used 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 made 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 will provide a means of properly disposing of HHW which might otherwise be disposed of in regular landfills, storm drains, sewer systems, or other means detrimental to the environment. This SEP will provide assistance to help rid communities of the dangers and health threats associated with HHW, and will provide for proper and protective disposal or recycling of collected materials.

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:

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.

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.