Executive Summary – Enforcement Matter – Case No. 50810
City of Selma
RN105603435
Docket No. 2015-1049-WQ-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
WQ
Small Business:
No
Location(s) Where Violation(s) Occurred:
City of Selma MS4, located in the area within the municipal boundaries of Selma and also in Comal, Guadalupe, and Bexar Counties
Type of Operation:
Municipal separate storm sewer system
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: December 25, 2015
Comments Received: No

Penalty Information

Total Penalty Assessed: $14,625
Amount Deferred for Expedited Settlement: $2,925
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $11,700
Total Due to General Revenue: $0
Payment Plan: N/A
Supplemental Environmental Project ("SEP") Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - High
Site/RN - High
Major Source: No
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: April 17, 2015
Date(s) of NOE(s): June 19, 2015

Executive Summary – Enforcement Matter – Case No. 50810
City of Selma
RN105603435
Docket No. 2015-1049-WQ-E

Violation Information

Failed to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System ("TPDES") General Permit for Municipal Separate Stormwater Systems. Specifically, TPDES General Permit No. TXR040356 expired on August 13, 2012 and a Notice of Intent ("NOI") and revised Stormwater Management Program ("SWMP") were not submitted by the application deadline date of June 11, 2014 [30 TEX. ADMIN. CODE § 281.125(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By July 28, 2015, the Respondent submitted a NOI and a SWMP to obtain authorization under TPDES General Permit No. TXR040000.

Technical Requirements:

The Order will require the Respondent to:

a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and

b. Within 180 days, submit written certification that authorization to discharge stormwater has been obtained.

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: Ronica Rodriguez, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2601; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483
TCEQ SEP Coordinator: N/A
Respondent: Larry Verner, P.E., City Engineer, City of Selma, 9375 Corporate Drive, Selma, Texas 78154
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	22-Jun-2015					
PCW	15-Jul-2015	**Screening**	2-Jul-2015	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	City of Selma		
Reg. Ent. Ref. No.	RN105603435		
Facility/Site Region	13-San Antonio	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	50810	**No. of Violations**	1
Docket No.	2015-1049-WQ-E	**Order Type**	1660
Media Program(s)	Water Quality	**Government/Non-Profit**	Yes
Multi-Media		**Enf. Coordinator**	Ronica Rodriguez
		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*: $16,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10.0% Enhancement — *Subtotals 2, 3, & 7*: -$1,625

Notes: Reduction for High Performer Classification.

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 $181
Estimated Cost of Compliance $2,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $14,625

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: $14,625

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $14,625

DEFERRAL 20.0% Reduction — *Adjustment*: -$2,925

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: $11,700

Screening Date 2-Jul-2015 **Docket No.** 2015-1049-WQ-E **PCW**

Respondent City of Selma

Policy Revision 4 (April 2014)

Case ID No. 50810

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105603435

Media [Statute] Water Quality

Enf. Coordinator Ronica Rodriguez

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgments or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	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)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage **capped at 100%* -10%

Screening Date 2-Jul-2015 **Docket No.** 2015-1049-WQ-E **PCW**

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Respondent City of Selma

Case ID No. 50810

Reg. Ent. Reference No. RN105603435

Media [Statute] Water Quality

Enf. Coordinator Ronica Rodriguez

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)(9)(i)(A)

Violation Description Failed to maintain authorization to discharge stormwater associated with a Texas Pollutant Discharge Elimination System ("TPDES") General Permit for Municipal Separate Stormwater Systems ("MS4"), as documented during an investigation conducted on April 17, 2015. Specifically, TPDES General Permit No. TXR040356 expired on August 13, 2012 and a Notice of Intent ("NOI") and revised Stormwater Management Program ("SWMP") were not submitted by the application deadline date of June 11, 2014.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $23,750

$1,250

Violation Events

Number of Violation Events 13 — 386 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $16,250

Thirteen monthly events are recommended from the application deadline date (June 11, 2014) to the screening date (July 2, 2015).

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 $16,250

Economic Benefit (EB) for this violation

Estimated EB Amount $181

Statutory Limit Test

Violation Final Penalty Total $14,625

This violation Final Assessed Penalty (adjusted for limits) $14,625

Economic Benefit Worksheet

Respondent City of Selma
Case ID No. 50810
Reg. Ent. Reference No. RN105603435
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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)	$2,000	11-Jun-2014	2-Apr-2016	1.81	$181	n/a	$181
Notes for DELAYED costs	Estimated cost to develop and implement a SWMP and submit a NOI and associated fees to obtain authorization to discharge stormwater. Date required is the application deadline date. Final date is the estimated 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 $2,000

TOTAL $181

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.

Compliance History Report

PENDING Compliance History Report for CN600665160, RN105603435, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN600665160, City of Selma **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN105603435, CITY OF SELMA MS4 **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: Located in the area within the municipal boundaries of Selma and also in Comal County, Guadalupe County, and Bexar County, Texas.

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):
STORMWATER PERMIT TXR040602

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: October 01, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 30, 2010 to September 30, 2015

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

Name: Ronica Rodriguez **Phone:** (512) 239-2601

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.):
N/A

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 SELMA RN105603435	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2015-1049-WQ-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 Selma ("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 municipal separate storm sewer system located in the area within the municipal boundaries of Selma and also in Comal County, Guadalupe County, and Bexar County, Texas (the "Facility").

2. The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).

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 24, 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 Fourteen Thousand Six Hundred Twenty-Five Dollars ($14,625) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand Seven

Hundred Dollars ($11,700) of the administrative penalty and Two Thousand Nine Hundred Twenty-Five Dollars ($2,925) 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 recognizes that by July 28, 2015, the Respondent submitted a Notice of Intent ("NOI") and a Stormwater Management Program ("SWMP") to obtain authorization under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR040000.

10. 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.

11. 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.

12. 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 maintain authorization to discharge stormwater associated with TPDES General Permit for Municipal Separate Stormwater Systems, in violation of 30 TEX. ADMIN. CODE § 281.125(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A), as documented during an investigation conducted on April 17, 2015. Specifically, TPDES General Permit No. TXR040356 expired on August 13, 2012 and a NOI and revised SWMP were not submitted by the application deadline date of June 11, 2014.

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: City of Selma, Docket No. 2015-1049-WQ-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. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing.

   b. Within 180 days after the effective date of this Agreed Order, submit written certification as described below that authorization to discharge stormwater has been obtained. 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
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

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 Facility 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. 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.

7. 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.

8. 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 | Date

For the Executive Director | 3/25/16
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.

Signature | 11/2/2015
Date

LARRY VERNER, P.E. | CITY ENGINEER
Name (Printed or typed) | Title
Authorized Representative of
City of Selma

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.