

Executive Summary – Enforcement Matter – Case No. 51138

City of Nash

RN105864847

Docket No. 2015-1255-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 Nash MS4, located in an area within the Nash city limits that is located within the Texarkana urban area, Bowie County

Type of Operation:

Small municipal separate storm sewer system ("MS4")

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 29, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,750

Amount Deferred for Expedited Settlement: \$3,750

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$15,000

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 - Satisfactory

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: May 21, 2015 through June 4, 2015

Date(s) of NOE(s): July 29, 2015

Executive Summary – Enforcement Matter – Case No. 51138
City of Nash
RN105864847
Docket No. 2015-1255-WQ-E

Violation Information

Failed to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System (“TPDES”) General Permit for a Small MS4. Specifically, TPDES General Permit No. TXR040395 expired on August 13, 2012 and a Notice of Intent and revised stormwater management program was not submitted by the application deadline date of June 11, 2014 [30 TEX. ADMIN. CODE § 281.25(b)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.33(b)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By July 27, 2015, the Respondent submitted a Notice of Intent and a stormwater management program under TPDES General Permit No. TXR040601.

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: Ross Luedtke, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-3157; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483
TCEQ SEP Coordinator: N/A
Respondent: The Honorable Robert H. Bunch, Mayor, City of Nash, P.O. Box 520, Nash, Texas 75569
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned PCW	3-Aug-2015	Screening	17-Aug-2015	EPA Due	
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RESPONDENT/FACILITY INFORMATION	
Respondent	City of Nash
Reg. Ent. Ref. No.	RN105864847
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	51138	No. of Violations	1
Docket No.	2015-1255-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 1
Maximum	\$25,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Estimated Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 17-Aug-2015

Docket No. 2015-1255-WQ-E

PCW

Respondent City of Nash

Policy Revision 4 (April 2014)

Case ID No. 51138

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105864847

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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100%

Screening Date 17-Aug-2015

Docket No. 2015-1255-WQ-E

PCW

Respondent City of Nash

Policy Revision 4 (April 2014)

Case ID No. 51138

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105864847

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(b)(4) and 40 Code of Federal Regulations § 122.33(b)(1)

Violation Description Failed to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System ("TPDES") General Permit for Small Municipal Separate Storm Sewer Systems, as documented during an investigation conducted from May 21, 2015 through June 4, 2015. Specifically, TPDES General Permit No. TXR040395 expired on August 13, 2012 and a Notice of Intent ("NOI") and revised stormwater management program ("SWMP") was not submitted by the application deadline date of June 11, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification	x			5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 15 432 Number of violation days

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

Violation Base Penalty \$18,750

Fifteen monthly events are recommended from the application deadline date (June 11, 2014) to the screening date (August 17, 2015).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/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 \$18,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$193

Violation Final Penalty Total \$18,750

This violation Final Assessed Penalty (adjusted for limits) \$18,750

Economic Benefit Worksheet

Respondent City of Nash
Case ID No. 51138
Reg. Ent. Reference No. RN105864847
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	11-Jun-2014	14-May-2016	1.93	\$193	n/a	\$193
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and submit a NOI and SWMP and obtain authorization to discharge stormwater. Date required is the application deadline date to submit a NOI and SWMP. Final date is the expected 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	\$193
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Compliance History Report

PENDING Compliance History Report for CN600694152, RN105864847, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator:	CN600694152, City of Nash	Classification: SATISFACTORY	Rating: 4.61
Regulated Entity:	RN105864847, CITY OF NASH MS4	Classification: HIGH	Rating: 0.00
Complexity Points:	7	Repeat Violator: NO	
CH Group:	14 - Other		
Location:	AREA WITHIN THE NASH CITY LIMITS THAT IS LOCATED WITHIN THE TEXARKANA UA IN BOWIE COUNTY, TX		
TCEQ Region:	REGION 05 - TYLER		
ID Number(s):	STORMWATER PERMIT TXR040601		
Compliance History Period:	September 01, 2010 to August 31, 2015	Rating Year: 2015	Rating Date: 09/01/2015
Date Compliance History Report Prepared:	September 22, 2015		
Agency Decision Requiring Compliance History:	Enforcement		
Component Period Selected:	September 22, 2010 to September 22, 2015		
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.			
Name:	Jennifer Graves	Phone:	(956) 430-6023

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 NASH
RN105864847**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-1255-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 Nash ("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 operates a small municipal separate storm sewer system ("MS4") located in an area within the Nash city limits that is located within the Texarkana urban area in Bowie County, Texas (the "Site").
2. The Site 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 August 3, 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 Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Fifteen Thousand Dollars

(\$15,000) of the administrative penalty and Three Thousand Seven Hundred Fifty Dollars (\$3,750) 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 27, 2015, the Respondent submitted a Notice of Intent ("NOI") and a stormwater management program ("SWMP") under Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR040601.
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 operator of the Site, the Respondent is alleged to have failed to maintain authorization to discharge stormwater associated with TPDES General Permit for Small Municipal Separate Storm Sewer System ("MS4"), in violation of 30 TEX. ADMIN. CODE § 281.25(b)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.33(b)(1), as documented during an investigation conducted from May 21, 2015 through June 4, 2015. Specifically, TPDES General Permit No. TXR040395 expired on August 13, 2012 and a NOI and revised SWMP was 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 Nash, Docket No. 2015-1255-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 that authorization to discharge stormwater has been obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 219
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

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. 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

Tom M. Moore
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.

Robert H. Bunch
Signature

November 2, 2015
Date

Robert H. Bunch
Name (Printed or typed)
Authorized Representative of
City of Nash

Mayor
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.