

Executive Summary – Enforcement Matter – Case No. 51481
San Miguel Electric Cooperative, Inc.
RN102342961
Docket No. 2015-1640-IWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

San Miguel SES, 6200 Farm-to-Market Road 3387, approximately six miles east of State Highway 16, near Christine, Atascosa County

Type of Operation:

Lignite-fired steam electric generating power plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 27, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$26,564

Amount Deferred for Expedited Settlement: \$5,312

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$21,252

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 - Satisfactory

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: March 16, 2015 through May 18, 2015

Date(s) of NOE(s): October 19, 2015

Executive Summary – Enforcement Matter – Case No. 51481
San Miguel Electric Cooperative, Inc.
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Docket No. 2015-1640-IWD-E

Violation Information

1. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state. Specifically, the elevated water level of the ash ponds caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 13, 2015. An estimated 519,882 gallons of industrial wastewater discharged from the ash ponds through the upper portion of the siphon structure and travelled offsite into an unnamed tributary and thence to Souse Creek [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 7 and 13(b)].
2. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state. Specifically, the elevated water level of the equalization pond caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 14, 2015. An estimated 368,805 gallons of industrial wastewater overflowed from the eastern portion of the equalization pond and travelled offsite into an unnamed tributary and thence to Souse Creek [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 3 and 13(b)].
3. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal. Specifically, the ash ponds contained approximately 40% solids and the equalization pond contained approximately 70% solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1].
4. Failed to take all reasonable steps to minimize or prevent any discharge, sludge use, disposal, or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment. Specifically, industrial wastewater was routed from the ash ponds and equalization pond into the Lignite Yard Retention Pond from March 13 to March 18, 2015 and March 21 to March 24, 2015, resulting in the commingling of industrial wastewaters. Subsequently, during three discharge periods, March 21 to April 11, 2015, April 18 to May 1, 2015, and May 12 to May 18, 2015, a total of an estimated 23.966 million gallons of commingled industrial wastewater was discharged from Outfall No. 001 [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4), and TPDES Permit No. WQ0002601000, Other Requirements No. 3 and Permit Conditions No. 2.g.].
5. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment and disposal. Specifically, the drain located adjacent to the ash pond siphon pumps is plumbed directly to the Lignite Yard Retention Pond, allowing for the commingling and subsequent discharge of industrial wastewater when the siphons

Executive Summary – Enforcement Matter – Case No. 51481
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overflow [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1].

6. Failed to notify the TCEQ Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of any noncompliance which may endanger human health or safety, or the environment. Specifically, the unauthorized discharge that was discovered on or about March 13, 2015 was not reported to the TCEQ San Antonio Regional Office until March 17, 2015 [30 TEX. ADMIN. CODE § 305.125(1) and (9)(A) and TPDES Permit No. WQ0002601000, Monitoring Requirements No. 7.a.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

- a. By March 16, 2015, conducted effluent sampling and analyses of the ash ponds and equalization pond.
- b. By March 18, 2015:
 - i. Installed a temporary berm around the north, east, and south diked sides of the equalization pond;
 - ii. Ceased pumping industrial wastewater from the equalization pond to the ash ponds; and
 - iii. Ceased the unauthorized discharge from the equalization pond.
- c. By March 24, 2015:
 - i. Ceased pumping industrial wastewater from the ash ponds to the Lignite Yard Retention Pond; and
 - ii. Ceased the unauthorized discharge from the ash ponds.
- d. By May 26, 2015:
 - i. Conducted effluent sampling and analyses of the Lignite Yard Retention Pond; and
 - ii. Plugged the drain located adjacent to the ash pond siphon pumps and installed a pump to route overflows back to the ash ponds.

Executive Summary – Enforcement Matter – Case No. 51481
San Miguel Electric Cooperative, Inc.
RN102342961
Docket No. 2015-1640-IWD-E

Technical Requirements:

The Order will require the Respondent to:

a. Within 30 days:

- i. Properly collect and dispose of the excess solids within the ash ponds; and
- ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that:

(1.) All noncompliance notifications for violations that may endanger human health or safety, or the environment are submitted to the TCEQ San Antonio Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of the noncompliance; and

(2.) Through solids removal, pond maintenance, and operating practices, the amount of solids within the Facility's ponds allow for the proper management of wastewater during periods of elevated rainfall or reduced operating loads of the Facility.

b. Within 45 days, submit written certification of compliance with a.

c. Within 60 days, conduct an engineering evaluation of the Facility's Lignite Yard Retention Pond to determine the level of contamination caused by the commingled industrial wastewater. The evaluation shall be prepared and approved by a registered Texas Professional Engineer and include a plan and schedule for the completion of necessary corrective actions within 270 days.

d. Within 75 days, submit written certification of compliance with c.

e. Within 270 days:

- i. Properly collect and dispose of the excess solids within the equalization pond; and
- ii. Complete the necessary corrective actions designed to remediate the Lignite Yard Retention Pond.

f. Within 285 days, submit written certification of compliance with e.

Executive Summary – Enforcement Matter – Case No. 51481
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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: Larry Butler, Enforcement Division,
Enforcement Team 3, MC 169, (512) 239-2543; Michael Parrish, Enforcement Division,
MC 219, (512) 239-2548
TCEQ SEP Coordinator: N/A
Respondent: Derrick Brummett, Interim General Manager, San Miguel Electric
Cooperative, Inc., P.O. Box 280, Jourdanton, Texas 78026
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	19-Oct-2015	Screening	28-Oct-2015	EPA Due	
	PCW	8-Jan-2016				

RESPONDENT/FACILITY INFORMATION	
Respondent	San Miguel Electric Cooperative, Inc.
Reg. Ent. Ref. No.	RN102342961
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	6
Enf./Case ID No.	51481	Order Type	1660
Docket No.	2015-1640-IWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Larry Butler
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$25,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 15.0% Adjustment **Subtotals 2, 3, & 7** \$3,750

Notes: Enhancement for three months of self-reported effluent violations.

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** -\$2,186

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

Total EB Amounts	\$8,188
Estimated Cost of Compliance	\$80,855

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$26,564

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$26,564

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$26,564

DEFERRAL 20.0% Reduction Adjustment -\$5,312

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 \$21,252

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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) 15%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for three months of self-reported effluent violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 15%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 15%

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 7 and 13(b)

Violation Description Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the ash ponds caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 13, 2015. An estimated 519,882 gallons of industrial wastewater discharged from the ash ponds through the upper portion of the siphon structure and travelled offsite into an unnamed tributary and thence to Souse Creek.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 11

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$3,750

One monthly event is recommended from the date of the discharge (March 13, 2015) to the date corrective actions were completed (March 24, 2015).

Good Faith Efforts to Comply

25.0% Reduction \$937

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A.

Notes The Respondent achieved compliance by March 24, 2015.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$3,376

This violation Final Assessed Penalty (adjusted for limits) \$3,376

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.
Case ID No. 51481
Reg. Ent. Reference No. RN102342961
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)	\$1,000	13-Mar-2015	24-Mar-2015	0.03	\$0	\$2	\$2
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	\$1,000	16-Mar-2015	16-Mar-2015	0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to complete corrective actions to cease the unauthorized discharge from the Facility's ash ponds. Date required is the date of the discharge. Final date is the date corrective actions were completed.

Estimated cost to conduct effluent sampling and analyses of the ash ponds. Date required is the investigation start date. Final date is the date the last sample was taken.

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

\$2

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 3 and 13(b)

Violation Description

Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the equalization pond caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 14, 2015. An estimated 368,805 gallons of industrial wastewater overflowed from the eastern portion of the equalization pond and travelled offsite into an unnamed tributary and thence to Souse Creek.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

4 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One monthly event is recommended from the date of the discharge (March 14, 2015) to the date corrective actions were completed (March 18, 2015).

Good Faith Efforts to Comply

25.0%

Reduction \$937

Before NOE/NOV NOE/NOV to EDRP/ Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes The Respondent achieved compliance by March 18, 2015.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$3,376

This violation Final Assessed Penalty (adjusted for limits) \$3,376

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.

Case ID No. 51481

Reg. Ent. Reference No. RN102342961

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$1,000	14-Mar-2015	18-Mar-2015	0.01	\$0	\$1	\$1
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,000	16-Mar-2015	16-Mar-2015	0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to pump the excess industrial wastewater from the equalization pond to the ash ponds and install a temporary berm around the north, east, and south diked sides of the equalization pond. Date required is the date of the discharge. Final date is the date corrective actions were completed.

Estimated cost to conduct effluent sampling and analyses of the equalization pond. Date required is the investigation start date. Final date is the date the last sample was taken.

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

\$1

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 3

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1

Violation Description

Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the ash ponds contained approximately 40% solids and the equalization pond contained approximately 70% solids.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

226 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

Three quarterly events are recommended from the investigation start date (March 16, 2015) to the screening date (October 28, 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$869

Violation Final Penalty Total \$4,313

This violation Final Assessed Penalty (adjusted for limits) \$4,313

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.
Case ID No. 51481
Reg. Ent. Reference No. RN102342961
Media Water Quality
Violation No. 3

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	\$250	16-Mar-2015	30-Jul-2016	1.38	\$17	n/a	\$17
Remediation/Disposal	\$5,000	16-Mar-2015	30-Jul-2016	1.38	\$344	n/a	\$344
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	16-Mar-2015	27-Mar-2017	2.03	\$508	n/a	\$508

Notes for DELAYED costs

Estimated delayed cost to implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that the amount of solids within the Facility's ponds allow for the proper management of wastewater during periods of elevated rainfall or reduced operating loads of the Facility. Date required is the investigation start date. Final date is the estimated date of compliance.

Estimated cost to properly collect and dispose of the excess solids within the Facility's ash ponds. Date required is the investigation start date. Final date is the estimated date of compliance.

Estimated cost to properly collect and dispose of the excess solids within the Facility's equalization pond. Date required is the investigation start 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

\$10,250

TOTAL

\$869

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 4

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (4), and TPDES Permit No. WQ0002601000, Other Requirements No. 3 and Permit Conditions No. 2.g

Violation Description

Failed to take all reasonable steps to minimize or prevent any discharge, sludge use, disposal, or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, industrial wastewater was routed from the ash ponds and equalization pond into the Lignite Yard Retention Pond from March 13 to March 18, 2015 and March 21 to March 24, 2015, resulting in the commingling of industrial wastewaters. Subsequently, during three discharge periods, March 21 to April 11, 2015, April 18 to May 1, 2015, and May 12 to May 18, 2015, a total of an estimated 23.966 million gallons of commingled industrial wastewater was discharged from Outfall No. 001.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

42 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended, one monthly event for each discharge period.

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 \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,295

Violation Final Penalty Total \$12,938

This violation Final Assessed Penalty (adjusted for limits) \$12,938

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.

Case ID No. 51481

Reg. Ent. Reference No. RN102342961

Media Water Quality

Violation No. 4

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	\$50,000	13-Mar-2015	27-Mar-2017	2.04	\$340	\$6,804	\$7,144
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$15,500	16-Mar-2015	26-May-2015	0.19	\$151	n/a	\$151
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost for a registered Texas Professional Engineer to conduct an engineering evaluation of the Facility's Lignite Yard Retention Pond, to determine the level of contamination caused by the commingled industrial wastewater and submit a plan and schedule for the completion of necessary corrective actions. Date required is the date of the first documented discharge. Final date is the estimated date of compliance.

Estimated cost to conduct effluent sampling and analyses of the Lignite Yard Retention Pond. Date required is the investigation start date. Final date is the date the last sample was taken.

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

\$65,500

TOTAL

\$7,295

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 5

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1

Violation Description

Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the drain located adjacent to the ash pond siphon pumps is plumbed directly to the Lignite Yard Retention Pond, allowing for the commingling and subsequent discharge of industrial wastewater when the siphons overflow.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5.0%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 71

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation start date (March 16, 2015) to the date of compliance (May 26, 2015).

Good Faith Efforts to Comply

25.0%

Reduction \$312

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes The Respondent achieved compliance on May 26, 2015.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10

Violation Final Penalty Total \$1,126

This violation Final Assessed Penalty (adjusted for limits) \$1,126

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.
Case ID No. 51481
Reg. Ent. Reference No. RN102342961
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

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)	\$1,000	16-Mar-2015	26-May-2015	0.19	\$10	n/a	\$10

Notes for DELAYED costs

Estimated cost to plug the drain located adjacent to the ash pond siphon pumps and install a pump to route overflows back to the ash ponds. Date required is the investigation start date. 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

\$1,000

TOTAL

\$10

Screening Date 28-Oct-2015

Docket No. 2015-1640-IWD-E

PCW

Respondent San Miguel Electric Cooperative, Inc.

Policy Revision 4 (April 2014)

Case ID No. 51481

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102342961

Media [Statute] Water Quality

Enf. Coordinator Larry Butler

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and (9)(A) and TPDES Permit No. WQ0002601000, Monitoring Requirements No. 7.a

Violation Description

Failed to notify the TCEQ Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of any noncompliance which may endanger human health or safety, or the environment, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the unauthorized discharge that was discovered on or about March 13, 2015 was not reported to the TCEQ San Antonio Regional Office until March 17, 2015.

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 requirements were not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$1,438

This violation Final Assessed Penalty (adjusted for limits) \$1,438

Economic Benefit Worksheet

Respondent San Miguel Electric Cooperative, Inc.
Case ID No. 51481
Reg. Ent. Reference No. RN102342961
Media Water Quality
Violation No. 6

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	\$100	14-Mar-2015	30-Jul-2016	1.38	\$7	n/a	\$7
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to implement improvements to the Facility's process procedures, guidance, training and/or oversight to ensure that all noncompliance notifications for violations that may endanger human health or safety, or the environment are reported to the TCEQ San Antonio Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of the noncompliance. Date required is the end of the 24-hour period following the noncompliance. 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]	\$5	13-Mar-2015	14-Mar-2015	0.00	\$0	\$5	\$5
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to properly notify the TCEQ San Antonio Regional Office within 24 hours upon becoming aware of a noncompliance. Date required is the date of the discharge. Final date is the end of the 24-hour period following the noncompliance.

Approx. Cost of Compliance

\$105

TOTAL

\$12

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 CN600132278, RN102342961, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN600132278, San Miguel Electric Cooperative, Inc. **Classification:** SATISFACTORY **Rating:** 0.52

Regulated Entity: RN102342961, San Miguel SES **Classification:** SATISFACTORY **Rating:** 1.20

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

CH Group: 06 - Electric Power Generation

Location: 6200 FARM-TO-MARKET ROAD 3387, APPROXIMATELY SIX MILES EAST OF STATE HIGHWAY 16, NEAR CHRISTINE, ATASCOSA COUNTY, TEXAS

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

WASTEWATER PERMIT WQ0002601000

WASTEWATER EPA ID TX0090611

WASTEWATER LICENSING LICENSE WQ0002601000

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

Date Compliance History Report Prepared: December 14, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 14, 2010 to December 14, 2015

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

Name: Larry Butler

Phone: (512) 239-2543

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	December 22, 2010	(897560)	Item 7	July 12, 2011	(953954)
Item 2	January 06, 2011	(903452)	Item 8	August 08, 2011	(960546)
Item 3	March 04, 2011	(917582)	Item 9	September 09, 2011	(966603)
Item 4	April 20, 2011	(928703)	Item 10	October 06, 2011	(972614)
Item 5	May 05, 2011	(939290)	Item 11	November 15, 2011	(978759)
Item 6	June 20, 2011	(946692)	Item 12	December 08, 2011	(985596)

Item 13	January 11, 2012	(991877)	Item 35	November 12, 2013	(1141983)
Item 14	February 07, 2012	(999241)	Item 36	December 09, 2013	(1148441)
Item 15	March 20, 2012	(1004749)	Item 37	January 09, 2014	(1154518)
Item 16	April 11, 2012	(1011331)	Item 38	February 18, 2014	(1161839)
Item 17	May 10, 2012	(1017694)	Item 39	March 28, 2014	(1168464)
Item 18	June 07, 2012	(1025486)	Item 40	April 07, 2014	(1175628)
Item 19	July 09, 2012	(1032818)	Item 41	May 08, 2014	(1181832)
Item 20	August 13, 2012	(1039254)	Item 42	June 11, 2014	(1188725)
Item 21	September 13, 2012	(1048204)	Item 43	July 13, 2014	(1200523)
Item 22	October 15, 2012	(1067407)	Item 44	August 15, 2014	(1200524)
Item 23	November 06, 2012	(1067408)	Item 45	October 01, 2014	(1207086)
Item 24	December 10, 2012	(1067409)	Item 46	October 31, 2014	(1213491)
Item 25	January 09, 2013	(1081711)	Item 47	November 12, 2014	(1219747)
Item 26	February 12, 2013	(1081710)	Item 48	December 12, 2014	(1225535)
Item 27	April 08, 2013	(1096993)	Item 49	January 13, 2015	(1232545)
Item 28	May 09, 2013	(1107960)	Item 50	February 27, 2015	(1243546)
Item 29	June 10, 2013	(1111592)	Item 51	March 10, 2015	(1249915)
Item 30	July 09, 2013	(1118495)	Item 52	July 16, 2015	(1278199)
Item 31	August 08, 2013	(1126280)	Item 53	August 14, 2015	(1284388)
Item 32	August 28, 2013	(1105601)	Item 54	September 09, 2015	(1291539)
Item 33	September 19, 2013	(1130830)	Item 55	October 13, 2015	(1297715)
Item 34	October 07, 2013	(1136596)			

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

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

1	Date:	03/31/2015 (1256806)	CN600132278		
	Self Report?	YES	Classification:	Moderate	
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			
2	Date:	04/30/2015 (1263549)	CN600132278		
	Self Report?	YES	Classification:	Moderate	
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			
3	Date:	05/31/2015 (1270674)	CN600132278		
	Self Report?	YES	Classification:	Moderate	
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to meet the limit for one or more permit parameter			

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SAN MIGUEL ELECTRIC
COOPERATIVE, INC.
RN102342961**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2015-1640-IWD-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding San Miguel Electric Cooperative, Inc. (the "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 lignite-fired steam electric generating power plant at 6200 Farm-to-Market Road 3387, approximately six miles east of State Highway 16, near Christine, Atascosa County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 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 Twenty-Six Thousand Five Hundred Sixty-Four Dollars (\$26,564) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twenty-One Thousand Two Hundred Fifty-Two Dollars (\$21,252) of the administrative penalty and Five Thousand Three Hundred Twelve Dollars (\$5,312) 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 the Respondent has implemented the following corrective measures at the Facility:
 - a. By March 16, 2015:
 - i. Conducted effluent sampling and analyses of the ash ponds and equalization pond.
 - b. By March 18, 2015:
 - i. Installed a temporary berm around the north, east, and south diked sides of the equalization pond;
 - ii. Ceased pumping industrial wastewater from the equalization pond to the ash ponds; and
 - iii. Ceased the unauthorized discharge from the equalization pond.
 - c. By March 24, 2015:
 - i. Ceased pumping industrial wastewater from the ash ponds to the Lignite Yard Retention Pond; and
 - ii. Ceased the unauthorized discharge from the ash ponds.
 - d. By May 26, 2015,
 - i. Conducted effluent sampling and analyses of the Lignite Yard Retention Pond; and

- ii. Plugged the drain located adjacent to the ash pond siphon pumps and installed a pump to route overflows back to the ash ponds.
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:

1. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 7 and 13(b), as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the ash ponds caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 13, 2015. An estimated 519,882 gallons of industrial wastewater discharged from the ash ponds through the upper portion of the siphon structure and travelled offsite into an unnamed tributary and thence to Souse Creek.
2. Failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0002601000, Permit Conditions No. 2.g and Other Requirements Nos. 3 and 13(b), as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the elevated water level of the equalization pond caused by significant rainfall and reduced operating loads of the Facility, resulted in the unauthorized discharge of industrial wastewater on March 14, 2015. An estimated 368,805 gallons of industrial wastewater overflowed from the eastern portion of the equalization pond and travelled offsite into an unnamed tributary and thence to Souse Creek.
3. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the ash ponds contained approximately 40% solids and the equalization pond contained approximately 70% solids.

4. Failed to take all reasonable steps to minimize or prevent any discharge, sludge use, disposal, or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4), and TPDES Permit No. WQ0002601000, Other Requirements No. 3 and Permit Conditions No. 2.g., as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, industrial wastewater was routed from the ash ponds and equalization pond into the Lignite Yard Retention Pond from March 13 to March 18, 2015 and March 21 to March 24, 2015, resulting in the commingling of industrial wastewaters. Subsequently, during three discharge periods, March 21 to April 11, 2015, April 18 to May 1, 2015, and May 12 to May 18, 2015, a total of an estimated 23.966 million gallons of commingled industrial wastewater was discharged from Outfall No. 001.
5. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment and disposal, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0002601000, Operational Requirements No. 1, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the drain located adjacent to the ash pond siphon pumps is plumbed directly to the Lignite Yard Retention Pond, allowing for the commingling and subsequent discharge of industrial wastewater when the siphons overflow.
6. Failed to notify the TCEQ Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of any noncompliance which may endanger human health or safety, or the environment, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (9)(A) and TPDES Permit No. WQ0002601000, Monitoring Requirements No. 7.a, as documented during an investigation conducted from March 16 through May 18, 2015. Specifically, the unauthorized discharge that was discovered on or about March 13, 2015 was not reported to the TCEQ San Antonio Regional Office until March 17, 2015.

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: San Miguel Electric Cooperative, Inc., Docket No. 2015-1640-IWD-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Properly collect and dispose of the excess solids within the ash ponds; and
 - ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that:
 - (1.) All noncompliance notifications for violations that may endanger human health or safety, or the environment are submitted to the TCEQ San Antonio Regional Office, orally or by facsimile transmission, within 24 hours of becoming aware of the noncompliance, in accordance with 30 TEX. ADMIN. CODE 305.125(9)(A) and 9(B) and TPDES Permit No. WQ0002601000, Monitoring and Reporting Requirements No. 7.a; and
 - (2.) Through solids removal, pond maintenance, and operating practices, the amount of solids within the Facility's ponds allow for the proper management of wastewater during periods of elevated rainfall or reduced operating loads of the Facility.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii, in accordance with Ordering Provision No. 2.g below.
 - c. Within 60 days after the effective date of this Agreed Order, conduct an engineering evaluation of the Facility's Lignite Yard Retention Pond to determine the level of contamination caused by the commingled industrial wastewater. The evaluation shall be prepared and approved by a registered Texas Professional Engineer and include a plan and schedule for the completion of necessary corrective actions within 270 days after the effective date of this Agreed Order.
 - d. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c, in accordance with Ordering Provision No. 2.g below.
 - e. Within 270 days after the effective date of this Agreed Order:
 - i. Properly collect and dispose of the excess solids within the equalization pond; and

- ii. Complete the necessary corrective actions designed to remediate the Lignite Yard Retention Pond, as prescribed in the evaluation required by Ordering Provision No. 2.c.
- f. Within 285 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.e.i and 2.e.ii, in accordance with Ordering Provision No. 2.g below.
- g. The written certification of compliance required by Ordering Provision Nos. 2.b, 2.d, and 2.f shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- 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

7/21/16

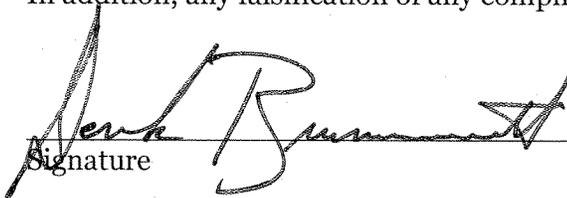
Date

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

April 26, 2016

Date

Derrick Brummett

Name (Printed or typed)
Authorized Representative of
San Miguel Electric Cooperative, Inc.

Interim General 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 IV, Paragraph 1 of this Agreed Order.