

Executive Summary – Enforcement Matter – Case No. 50695
City of Pearland
RN101613446
Docket No. 2015-0915-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Barry Rose Facility No. 2, located on Pearland Parkway, 500 feet north of the intersection of Pearland Parkway and Barry Rose Road, Brazoria County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 20, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,500

Amount Deferred for Expedited Settlement: \$2,100

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$8,400

Name of SEP: The Trust for Public Land (Third-Party Pre-Approved)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 14, 2015

Date(s) of NOE(s): June 2, 2015

**Executive Summary – Enforcement Matter – Case No. 50695
City of Pearland
RN101613446
Docket No. 2015-0915-MWD-E**

Violation Information

Failed to comply with permitted effluent limits for 5-day biochemical oxygen demand and ammonia nitrogen [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010134002, Interim Effluent Limitations and Monitoring Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).
2. The Order will also require the Respondent to, within 90 days, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010134002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

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; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

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

Respondent: The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581

Respondent's Attorney: Darrin Coker, City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581

Attachment A
Docket Number: 2015-0915-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Pearland
Penalty Amount:	Eight Thousand Four Hundred Dollars (\$8,400)
SEP Offset Amount:	Eight Thousand Four Hundred Dollars (\$8,400)
Type of SEP:	Contribution to a Third-Party Administrator SEP
Third-Party Administrator:	The Trust for Public Land
Project Name:	<i>The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program</i>
Location of SEP:	Brazoria, Chambers, Galveston, and Harris Counties

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Trust for Public Land** (“TPL”) for *The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used for property acquisitions that will preserve open space in the Galveston Bay watershed, thereby contributing to improved water quality, conserving wetlands and other special habitats, and increasing public access to the Bay, its tributaries, and their habitats. TPL's professional staff (a) works with local interests to identify acquisition projects, (b) purchases the land to remove it from the market, and (c) transfers the land to a public agency or nonprofit organization, which will be the ultimate fee title holder and permanent steward of the property. TPL will ensure that each property is encumbered with a conservation easement that will preserve the property into perpetuity. SEP Offset Amount will be used for the purchase of land. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

City of Pearland
Agreed Order - Attachment A

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

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

b. Environmental Benefit

The preservation of open space in the Galveston Bay watershed provides substantial environmental, economic, and community benefits for the region. Open space contributes free ecological services, services that society must pay for otherwise. A key environmental benefit for acquisitions along Galveston Bay system waterways will be maintaining/restoring stream buffers that will help filter contaminants before they reach the water, and providing wildlife habitat. Forested buffers provide the additional benefit of improving air quality through the removal of carbon dioxide, ozone, and sulfur dioxide. Acquiring habitat along the bay front or along streams would also provide a buffer for coastal wetlands, preventing their further degradation, and ensuring greater protection of uplands from storm surge and other erosional forces.

The habitats of the Galveston Bay system - barrier islands, oak and riparian woodlands, coastal prairies, cypress swamps, seagrass meadows, saltgrass marshes, and oyster reefs host an astounding cornucopia of wildlife, including 95 percent of the recreationally and commercially important fish species of the Bay and Gulf systems, and 75 percent of North America's bird species. Yet, these habitats have suffered substantial losses and changes: increases in open water, losses of seagrass beds and coastal prairie uplands, conversion of freshwater wetlands to brackish wetlands or agricultural lands, and degradation of estuarine marshes.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **The Trust for Public Land SEP** and shall mail the contribution with a copy of the Agreed Order to:

City of Pearland
Agreed Order - Attachment A

The Trust for Public Land
Attention: Scott Parker, Texas State Director
2579 Western Trails Boulevard, Suite 130
Austin, Texas 78745

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	8-Jun-2015	Screening	16-Jun-2015	EPA Due	5-Sep-2015
	PCW	25-Jun-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Pearland		
Reg. Ent. Ref. No.	RN101613446		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	50695	No. of Violations	1
Docket No.	2015-0915-MWD-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**

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	\$670
Estimated Cost of Compliance	\$10,000

*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 16-Jun-2015

Docket No. 2015-0915-MWD-E

PCW

Respondent City of Pearland

Policy Revision 4 (April 2014)

Case ID No. 50695

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101613446

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 (<i>number of NOVs meeting criteria</i>)	4	20%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 40%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for four months of self-reported effluent violations and one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 40%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 40%

Screening Date 16-Jun-2015

Docket No. 2015-0915-MWD-E

PCW

Respondent City of Pearland

Policy Revision 4 (April 2014)

Case ID No. 50695

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101613446

Media [Statute] Water Quality

Enf. Coordinator Ronica Rodriguez

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. WQ0010134002, Interim Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on May 14, 2015, and as shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%). Includes an 'OR' label.

>> Programmatic Matrix

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

Matrix Notes

A simplified model was used to evaluate five-day biochemical oxygen demand and ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. The amounts discharged at the time of the violation were insignificant and did not exceed levels of protective human health or the environment.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2 Number of violation days 121

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

Violation Base Penalty \$7,500

Two quarterly events are recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$670

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

Economic Benefit Worksheet

Respondent City of Pearland
Case ID No. 50695
Reg. Ent. Reference No. RN101613446
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
 Item Description 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			0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	31-Dec-2014	3-May-2016	1.34	\$670	n/a
					n/a	\$670

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of 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]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,000

TOTAL \$670

City of Pearland
TPDES Permit No. WQ0010134002
Docket No. 2015-0915-MWD-E

Effluent Violation Table				
Monitoring Period	Permitted Effluent Limits			
	BOD ₅ Daily Average Concentration Limit = 5 mg/L	BOD ₅ Daily Maximum Concentration Limit = 20 mg/L	Ammonia Nitrogen Daily Average Concentration Limit = 2 mg/L	Ammonia Nitrogen Daily Maximum Concentration Limit = 7 mg/L
December 2014	8.3	23.9	2.13	18.4
January 2015	6.5	c	c	c
February 2015	8.9	22.9	c	c
March 2015	8.6	23.7	c	c

BOD₅ = (five-day) biochemical oxygen demand
mg/L = milligrams per liter
c = compliant

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

PUBLISHED Compliance History Report for CN600595052, RN101613446, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator:	CN600595052, City of Pearland	Classification:	SATISFACTORY	Rating:	2.10
Regulated Entity:	RN101613446, BARRY ROSE FACILITY 2	Classification:	SATISFACTORY	Rating:	2.17
Complexity Points:	10	Repeat Violator:	NO		
CH Group:	08 - Sewage Treatment Facilities				
Location:	Located on Pearland Parkway, 500 feet north of the intersection of Pearland Parkway and Barry Rose Road in Brazoria County, Texas.				
TCEQ Region:	REGION 12 - HOUSTON				
ID Number(s):					
WASTEWATER PERMIT	WQ0010134002	WASTEWATER EPA ID	TX0032735		
STORMWATER PERMIT	TXR05V643				
Compliance History Period:	September 01, 2009 to August 31, 2014	Rating Year:	2014	Rating Date:	09/01/2014
Date Compliance History Report Prepared:	July 10, 2015				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	July 09, 2010 to July 09, 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:

- 1 Effective Date: 11/18/2011 ADMINORDER 2011-0585-MWD-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Effluent Limits PERMIT
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

- Item 1 July 14, 2010 (861232)
- Item 2 October 18, 2010 (881974)

Item 3	November 17, 2010	(888453)
Item 4	December 15, 2010	(896760)
Item 5	February 16, 2011	(909577)
Item 6	March 15, 2011	(916794)
Item 7	April 19, 2011	(926335)
Item 8	May 17, 2011	(938510)
Item 9	June 20, 2011	(945878)
Item 10	August 18, 2011	(959784)
Item 11	September 20, 2011	(965821)
Item 12	October 19, 2011	(971862)
Item 13	November 15, 2011	(978031)
Item 14	December 19, 2011	(984797)
Item 15	January 19, 2012	(991088)
Item 16	February 20, 2012	(998456)
Item 17	March 20, 2012	(1003983)
Item 18	April 17, 2012	(1010545)
Item 19	May 17, 2012	(1016927)
Item 20	June 20, 2012	(1024680)
Item 21	August 30, 2012	(1038472)
Item 22	September 19, 2012	(1047276)
Item 23	October 19, 2012	(1062880)
Item 24	January 24, 2013	(1080005)
Item 25	February 13, 2013	(1080004)
Item 26	March 18, 2013	(1089795)
Item 27	April 17, 2013	(1096192)
Item 28	May 20, 2013	(1107133)
Item 29	June 24, 2013	(1110786)
Item 30	July 16, 2013	(1117669)
Item 31	August 26, 2013	(1125458)
Item 32	September 19, 2013	(1130027)
Item 33	October 10, 2013	(1135778)
Item 34	November 15, 2013	(1141171)
Item 35	December 12, 2013	(1147635)
Item 36	January 16, 2014	(1153689)
Item 37	February 14, 2014	(1161019)
Item 38	March 18, 2014	(1167680)
Item 39	April 16, 2014	(1174800)
Item 40	May 16, 2014	(1180997)
Item 41	June 12, 2014	(1187906)
Item 42	July 14, 2014	(1183496)
Item 43	July 17, 2014	(1199354)
Item 44	August 30, 2014	(1199355)
Item 45	October 17, 2014	(1212702)
Item 46	November 17, 2014	(1218954)
Item 47	November 24, 2014	(1212701)
Item 48	December 18, 2014	(1224739)
Item 49	May 20, 2015	(1262716)

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: 12/31/2014 (1231374) CN600595052
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: 01/31/2015 (1242762) CN600595052
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: 02/28/2015 (1249114) CN600595052
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

4 Date: 03/31/2015 (1255999) CN600595052
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
CITY OF PEARLAND
RN101613446**

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

**AGREED ORDER
DOCKET NO. 2015-0915-MWD-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 Pearland ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located on Pearland Parkway, 500 feet north of the intersection of Pearland Parkway and Barry Rose Road in Brazoria County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 7, 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 Ten Thousand Five Hundred Dollars (\$10,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand One Hundred Dollars (\$2,100) is deferred

contingent upon the City of Pearland'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 City of Pearland fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City of Pearland to pay all or part of the deferred penalty. Eight Thousand Four Hundred Dollars (\$8,400) shall be conditionally offset by the City of Pearland's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, 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. WQ0010134002, Interim Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on May 14, 2015, and as shown in the table below:

Violation Table				
Monitoring Period	Permitted Effluent Limits			
	BOD ₅ Daily Average Concentration Limit = 5 mg/L	BOD ₅ Daily Maximum Concentration Limit = 20 mg/L	Ammonia Nitrogen Daily Average Concentration Limit = 2 mg/L	Ammonia Nitrogen Daily Maximum Concentration Limit = 7 mg/L
December 2014	8.3	23.9	2.13	18.4
January 2015	6.5	c	c	c
February 2015	8.9	22.9	c	c
March 2015	8.6	23.7	c	c

BOD₅ = (five-day) biochemical oxygen demand
mg/L = milligrams per liter
c = compliant

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 Pearland, Docket No. 2015-0915-MWD-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Thousand Four Hundred Dollars (\$8,400) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010134002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. 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

9/20/16
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

8-18-2016
Date

Darrin Coker
Name (Printed or typed)
Authorized Representative of
City of Pearland

City Attorney
Title

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

Attachment A
Docket Number: 2015-0915-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Pearland
Penalty Amount:	Eight Thousand Four Hundred Dollars (\$8,400)
SEP Offset Amount:	Eight Thousand Four Hundred Dollars (\$8,400)
Type of SEP:	Contribution to a Third-Party Administrator SEP
Third-Party Administrator:	The Trust for Public Land
Project Name:	<i>The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program</i>
Location of SEP:	Brazoria, Chambers, Galveston, and Harris Counties

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

a. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to **The Trust for Public Land** (“TPL”) for *The Trust for Public Land's Galveston Bay Natural Area Acquisition and Conservation Program*. The contribution will be used in accordance with the SEP between the Third-Party Administrator and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used for property acquisitions that will preserve open space in the Galveston Bay watershed, thereby contributing to improved water quality, conserving wetlands and other special habitats, and increasing public access to the Bay, its tributaries, and their habitats. TPL's professional staff (a) works with local interests to identify acquisition projects, (b) purchases the land to remove it from the market, and (c) transfers the land to a public agency or nonprofit organization, which will be the ultimate fee title holder and permanent steward of the property. TPL will ensure that each property is encumbered with a conservation easement that will preserve the property into perpetuity. SEP Offset Amount will be used for the purchase of land. The SEP will be done in accordance with all federal, state, and local environmental laws and regulations.

City of Pearland
Agreed Order - Attachment A

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

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

b. Environmental Benefit

The preservation of open space in the Galveston Bay watershed provides substantial environmental, economic, and community benefits for the region. Open space contributes free ecological services, services that society must pay for otherwise. A key environmental benefit for acquisitions along Galveston Bay system waterways will be maintaining/restoring stream buffers that will help filter contaminants before they reach the water, and providing wildlife habitat. Forested buffers provide the additional benefit of improving air quality through the removal of carbon dioxide, ozone, and sulfur dioxide. Acquiring habitat along the bay front or along streams would also provide a buffer for coastal wetlands, preventing their further degradation, and ensuring greater protection of uplands from storm surge and other erosional forces.

The habitats of the Galveston Bay system - barrier islands, oak and riparian woodlands, coastal prairies, cypress swamps, seagrass meadows, saltgrass marshes, and oyster reefs host an astounding cornucopia of wildlife, including 95 percent of the recreationally and commercially important fish species of the Bay and Gulf systems, and 75 percent of North America's bird species. Yet, these habitats have suffered substantial losses and changes: increases in open water, losses of seagrass beds and coastal prairie uplands, conversion of freshwater wetlands to brackish wetlands or agricultural lands, and degradation of estuarine marshes.

c. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Administrator and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Administrator. The Respondent shall make the check payable to **The Trust for Public Land SEP** and shall mail the contribution with a copy of the Agreed Order to:

City of Pearland
Agreed Order - Attachment A

The Trust for Public Land
Attention: Scott Parker, Texas State Director
2579 Western Trails Boulevard, Suite 130
Austin, Texas 78745

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

5. Publicity

Any public statements concerning this SEP and/or project, made by or on behalf of the Respondent must include a clear statement that **the project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

6. Recognition

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

7. Other SEPs by TCEQ or Other Agencies

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