

Executive Summary – Enforcement Matter – Case No. 51357

New Braunfels Utilities

RN101607786

Docket No. 2015-1501-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Kuehler Road North, located at 1922 Kuehler Avenue, approximately 0.5 mile east of Farm-to-Market Road 725 and 0.5 mile south of IH-35, off Kuehler Avenue, New Braunfels, Comal 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: January 22, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$35,437

Amount Deferred for Expedited Settlement: \$7,087

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$28,350

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: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 51357
New Braunfels Utilities
RN101607786
Docket No. 2015-1501-MWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: August 12, 2015
Date(s) of NOE(s): September 11, 2015

Violation Information

Failed to comply with permitted effluent limitations for 5-day biochemical oxygen demand, *Escherichia coli*, and total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010232003, Effluent Limitations and Monitoring Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to, within 380 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010232003, 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

Executive Summary – Enforcement Matter – Case No. 51357

New Braunfels Utilities

RN101607786

Docket No. 2015-1501-MWD-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: James Boyle, Enforcement Division,
Enforcement Team 3, MC 169, (512) 239-2527; Michael Parrish, Enforcement Division,
MC 219, (512) 239-2548

TCEQ SEP Coordinator: N/A

Respondent: Paula J. DiFonzo, Chief Executive Officer, New Braunfels Utilities, 263
Main Plaza, New Braunfels, Texas 78131

Doug Draeger, Executive Director of Operations, New Braunfels Utilities, 263 Main
Plaza, New Braunfels, Texas 78131

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned PCW	21-Sep-2015	Screening	28-Sep-2015	EPA Due	5-Dec-2015
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RESPONDENT/FACILITY INFORMATION

Respondent	New Braunfels Utilities	
Reg. Ent. Ref. No.	RN101607786	
Facility/Site Region	13-San Antonio	Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No.	51357	No. of Violations	2	
Docket No.	2015-1501-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	Yes	
Multi-Media		Enf. Coordinator	James Boyle	
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Adjustment **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	\$1,403
Estimated Cost of Compliance	\$31,000

*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 28-Sep-2015

Docket No. 2015-1501-MWD-E

PCW

Respondent New Braunfels Utilities

Policy Revision 4 (April 2014)

Case ID No. 51357

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101607786

Media [Statute] Water Quality

Enf. Coordinator James Boyle

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>)	7	35%
	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) 35%

>> 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 six months of self-reported effluent violations and one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 35%

Screening Date 28-Sep-2015
Respondent New Braunfels Utilities
Case ID No. 51357
Reg. Ent. Reference No. RN101607786
Media [Statute] Water Quality
Enf. Coordinator James Boyle

Docket No. 2015-1501-MWD-E

PCW

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

Violation Number

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. WQ0010232003,
 Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limitations, as documented during a record
 review conducted on August 12, 2015 and shown in the attached violation table.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="15.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

A simplified model was used to evaluate (5-day) biochemical oxygen demand to determine
 whether the discharged amounts of pollutants exceeded levels protective of human health or the
 environment. Total suspended solids and *Escherichia coli* ("*E. coli*") were also considered. The
 amounts discharged at the time of the violations were insignificant and did not exceed levels
 protective of human health or the environmental.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Three quarterly events are recommended for the quarters containing the months of August 2014,
 January 2015, February 2015, March 2015, April 2015, and May 2015.

Good Faith Efforts to Comply

Reduction

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent New Braunfels Utilities
Case ID No. 51357
Reg. Ent. Reference No. RN101607786
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction	\$21,000			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-Jul-2014	20-May-2017	2.81	\$1,403	n/a	\$1,403

Notes for DELAYED costs

Estimated cost to construct additional treatment capacity at the Facility. Date required is the initial date of noncompliance and the final date is the anticipated 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 \$31,000

TOTAL \$1,403

Screening Date 28-Sep-2015

Docket No. 2015-1501-MWD-E

PCW

Respondent New Braunfels Utilities

Policy Revision 4 (April 2014)

Case ID No. 51357

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101607786

Media [Statute] Water Quality

Enf. Coordinator James Boyle

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010232003, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limitations, as documented during a record review conducted on August 12, 2015, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Harm		
	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 the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2

61 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Two monthly events are recommended for the months of July 2014 and June 2015.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$20,250

This violation Final Assessed Penalty (adjusted for limits) \$20,250

Economic Benefit Worksheet

Respondent New Braunfels Utilities
Case ID No. 51357
Reg. Ent. Reference No. RN101607786
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				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

See Economic Benefit for Violation No. 1.

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 \$0

TOTAL \$0

New Braunfels Utilities
Docket No. 2015-1501-MWD-E
TPDES Permit No. WQ0010232003

Effluent Violation Table

Period	<i>E. coli</i>		Total Suspended Solids			BOD ₅		
	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Loading	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Loading
	Limit = 126 CFU/100 mL	Limit = 394* 399** CFU/100 mL	Limit = 15 mg/L	Limit = 40 mg/L	Limit = 388 lbs/day	Limit = 10 mg/L	Limit = 25 mg/L	Limit = 258 lbs/day
July 2014	c	2,419.6	c	c	c	11.89	c	c
August 2014	c	c	c	c	c	15.94	c	c
January 2015	c	c	c	c	c	10.56	c	c
February 2015	c	c	c	c	c	12.78	c	c
March 2015	c	c	c	c	c	13.59	c	323.9
April 2015	c	c	c	c	c	14.07	c	341.98
May 2015	148.77	920.8	17.4	94.33	480.74	19.46	59.4	521.13
June 2015	220.86	2,419.6	18.69	92	512.77	16.59	33.3	462.52

CFU/mL = colony forming units per 100 mL
BOD₅ = (5-day) biochemical oxygen demand
mg/L = milligrams per liter
lbs/day = pounds per day
Avg. = average
c = compliant

* = limit ending April 23, 2015
** = limit beginning April 24, 2015
Max. = maximum
E. coli = *Escherichia coli*
Conc. = concentration

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

PENDING Compliance History Report for CN600522957, RN101607786, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN600522957, New Braunfels Utilities **Classification:** SATISFACTORY **Rating:** 2.33

Regulated Entity: RN101607786, KUEHLER ROAD NORTH **Classification:** SATISFACTORY **Rating:** 1.62

Complexity Points: 7 **Repeat Violator:** NO

CH Group: 08 - Sewage Treatment Facilities

Location: 1922 Kuehler Avenue, approximately 0.5 mile east of Farm-to-Market Road 725 and 0.5 mile south of Interstate Highway 35, off Kuehler Avenue, in New Braunfels, Comal County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):

WASTEWATER PERMIT WQ0010232003

WASTEWATER EPA ID TX0088170

WASTEWATER AUTHORIZATION R10232003

WASTEWATER LICENSING LICENSE WQ0010232003

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

Date Compliance History Report Prepared: September 25, 2015

Agency Decision Requiring Compliance History: Enforcement

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

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

Name: James Boyle

Phone: (512) 239-2527

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	October 19, 2010	(882727)
Item 2	November 17, 2010	(928610)
Item 3	December 17, 2010	(928611)
Item 4	February 18, 2011	(910317)
Item 5	March 15, 2011	(917529)
Item 6	April 06, 2011	(928612)
Item 7	April 19, 2011	(928609)
Item 8	May 18, 2011	(939225)
Item 9	June 17, 2011	(946647)

Item 10	August 30, 2011	(960497)
Item 11	September 20, 2011	(966558)
Item 12	October 13, 2011	(972568)
Item 13	November 17, 2011	(978716)
Item 14	November 23, 2011	(991826)
Item 15	December 19, 2011	(985532)
Item 16	February 17, 2012	(999189)
Item 17	March 19, 2012	(1004700)
Item 18	April 20, 2012	(1011272)
Item 19	May 15, 2012	(1017638)
Item 20	June 18, 2012	(1025433)
Item 21	July 18, 2012	(1032771)
Item 22	August 17, 2012	(1039197)
Item 23	September 20, 2012	(1048152)
Item 24	October 17, 2012	(1067147)
Item 25	November 14, 2012	(1067148)
Item 26	December 14, 2012	(1067149)
Item 27	January 16, 2013	(1081604)
Item 28	February 19, 2013	(1081603)
Item 29	March 15, 2013	(1090593)
Item 30	April 17, 2013	(1096943)
Item 31	May 17, 2013	(1107911)
Item 32	June 12, 2013	(1060307)
Item 33	June 17, 2013	(1111538)
Item 34	July 30, 2013	(1103627)
Item 35	August 20, 2013	(1126230)
Item 36	September 17, 2013	(1130781)
Item 37	October 17, 2013	(1136546)
Item 38	November 20, 2013	(1141934)
Item 39	December 18, 2013	(1148392)
Item 40	February 19, 2014	(1161789)
Item 41	March 18, 2014	(1168412)
Item 42	April 17, 2014	(1175577)
Item 43	May 19, 2014	(1181783)
Item 44	June 17, 2014	(1188676)
Item 45	July 17, 2014	(1200457)
Item 46	October 20, 2014	(1213441)
Item 47	November 17, 2014	(1219697)
Item 48	December 15, 2014	(1225485)
Item 49	January 20, 2015	(1232431)
Item 50	February 24, 2015	(1223879)
Item 51	July 15, 2015	(1259448)

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: 01/31/2015 (1243495) CN600522957
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: 02/18/2015 (1215977) CN600522957
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to maintain compliance with the permitted effluent limits. Specifically, during the record review period of November 2013 to December 2014, two violations of the permitted limit of 10 mg/L for BOD 5-day were noted and one violation of the 394 daily max for E. coli. For the months of July and August 2014, the permittee reported 11.89 and 15.94 mg/L for BOD 5-day daily max. For the month of July 2014, the permittee reported 2419.6 CFU/100mL daily max for E. coli.

- 3 Date: 02/28/2015 (1249862) CN600522957
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 (1256744) CN600522957
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

- 5 Date: 04/30/2015 (1263497) CN600522957
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
- 6 Date: 05/31/2015 (1270623) CN600522957
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
- 7 Date: 06/30/2015 (1278146) CN600522957
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
NEW BRAUNFELS UTILITIES
RN101607786**

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

**AGREED ORDER
DOCKET NO. 2015-1501-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 New Braunfels Utilities ("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 at 1922 Kuehler Avenue, approximately 0.5 mile east of Farm-to-Market Road 725 and 0.5 mile south of Interstate Highway 35, off Kuehler Avenue in New Braunfels, Comal 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 September 16, 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 Thirty-Five Thousand Four Hundred Thirty-Seven Dollars (\$35,437) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid Twenty-Eight Thousand Three Hundred Fifty Dollars (\$28,350) of the administrative penalty and Seven Thousand Eighty-Seven Dollars (\$7,087) 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 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 limitations, 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. WQ0010232003, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on August 12, 2015 and as shown in the effluent violation table below:

Effluent Violation Table								
Period	<i>E. coli</i>		Total Suspended Solids			BOD ₅		
	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Loading	Daily Avg. Conc.	Daily Max. Conc.	Daily Avg. Loading
	Limit = 126 CFU/100 mL	Limit = 394* 399** CFU/100 mL	Limit = 15 mg/L	Limit = 40 mg/L	Limit = 388 lbs/day	Limit = 10 mg/L	Limit = 25 mg/L	Limit = 258 lbs/day
July 2014	c	2,419.6	c	c	c	11.89	c	c
August 2014	c	c	c	c	c	15.94	c	c
January 2015	c	c	c	c	c	10.56	c	c
February 2015	c	c	c	c	c	12.78	c	c
March 2015	c	c	c	c	c	13.59	c	323.9
April 2015	c	c	c	c	c	14.07	c	341.98
May 2015	148.77	920.8	17.4	94.33	480.74	19.46	59.4	521.13
June 2015	220.86	2,419.6	18.69	92	512.77	16.59	33.3	462.52

CFU/mL = colony forming units per 100 mL
 BOD₅ = (5-day) biochemical oxygen demand
 mg/L = milligrams per liter
 lbs/day = pounds per day
 Avg. = average
 c = compliant

* = limit ending April 23, 2015
 ** = limit beginning April 24, 2015
 Max. = maximum
E. coli = *Escherichia coli*
 Conc. = concentration

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: New Braunfels Utilities, Docket No. 2015-1501-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. It is further ordered that the Respondent shall, within 380 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010232003, 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 include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the 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
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, TX 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.

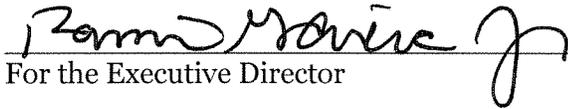
8. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

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

12-16-2015

Date

PAULA J. DiFONZO

Name (Printed or typed)
Authorized Representative of
New Braunfels Utilities

CEO

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.