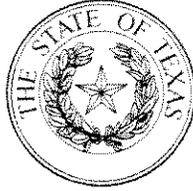


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 8, 2014

Anne Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-13-4773; TCEQ Docket No. 2011-1907-MWD-E;**
*Executive Director of the Texas Commission on Environmental Quality v. City
of Bridge City*

Dear Ms. Idsal:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than January 28, 2014. Any replies to exceptions or briefs must be filed in the same manner no later than February 7, 2014.

This matter has been designated **TCEQ Docket No. 2011-1907-MWD-E; SOAH Docket No. 582-13-4773**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Jo Qualtrough".

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/vg
Enclosures
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: CITY OF BRIDGE CITY

SOAH DOCKET NUMBER: 582-13-4773

REFERRING AGENCY CASE: 2011-1907-MWD-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH**

REPRESENTATIVE / ADDRESS

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CITY OF BRIDGE CITY

SOAH DOCKET NO. 582-13-4773
TCEQ DOCKET NO. 2011-1907-MWD-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
 Petitioner	§	
v.	§	OF
	§	
CITY OF BRIDGE CITY,	§	
 Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action against the City of Bridge City for nine water quality violations, and the city stipulated to seven out of the nine violations. The Administrative Law Judge (ALJ) finds that the ED did not meet his burden of proof on the two remaining violations and recommends that the Commission impose a penalty of \$66,626 and require Bridge City to undertake corrective action.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The parties did not raise issues regarding jurisdiction or notice. Therefore, the ALJ will address those issues only in the findings of fact and conclusions of law in the proposed order attached to this proposal for decision.

ALJ Kerrie Jo Qualtrough convened the hearing on the merits on October 24 and October 28, 2013, in the hearings rooms of the State Office of Administrative Hearings in Austin, Texas. The parties submitted closing arguments on November 4, 2013, with responses due on November 12, 2013. The evidentiary record closed on November 12, 2013.

During the evidentiary hearing, Bridge City stipulated to many of the violations, and the ED attached the “Amended Joint Stipulations (Exhibit ED 34)” to his initial closing arguments to reflect the parties’ agreement. However, this exhibit contained an error, and on December 5, 2013, the ED

moved to withdraw ED Exhibit 34 and offered ED Exhibit 37 containing the correct stipulations. On December 9, 2013, the ALJ convened a telephonic post-hearing conference to discuss the issue. Bridge City participated in the conference and did not object to withdrawal of ED Exhibit 34 and the admission of ED Exhibit 37. Accordingly, on December 9, 2013, the ALJ withdrew ED Exhibit 34 from the evidentiary record and admitted ED Exhibit 37.

II. DISCUSSION

A. Amended Joint Stipulations

On March 28, 2013, the ED issued his Preliminary Report and Petition (EDPRP) and alleged that Bridge City committed nine violations regarding the operation and maintenance of its wastewater treatment plant (WWTP or Facility).¹ Bridge City does not dispute seven of the nine violations alleged by the ED, and the parties submitted the following stipulations to that effect:²

During an investigation conducted on May 25 and 26, 2011, and a record review conducted on January 31, 2012, a TCEQ Beaumont Regional Office investigator and TCEQ staff documented that Respondent violated the following requirements:

1. Texas Water Code § 26.121(a)(1), 30 Texas Administrative Code § 305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010051001, Permit Conditions No. 2.d and Effluent Limitations and Monitoring Requirements No. 4, by failing to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment. Specifically, there was sludge in the receiving stream ranging from three to eight inches thick that extended from approximately 10 yards downstream of the outfall to over 100 yards downstream. Samples collected from the receiving stream indicated elevated levels of pollutants;
2. 30 Texas Administrative Code § 305.125(1) and TPDES Permit No. WQ0010051001, Monitoring and Reporting Requirements No. 7.c, by failing to submit noncompliance notifications for effluent violations that exceeded

¹ ED Ex. A.

² ED Ex. 37 (Amended Joint Stipulations).

the permitted effluent limit by 40% or more for the monitoring periods ending May 31, 2010, and November 30, 2010;

3. 30 Texas Administrative Code §§ 305.125(1) and 319.11 and TPDES Permit No. WQ0010051001, Monitoring and Reporting Requirements No. 2, by failing to comply with test procedures for the analysis of pollutants. Specifically, the primary flow measurement device was not installed as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the Executive Director; the dissolved oxygen meter was not being calibrated monthly; samples for chlorine residual, pH, and dissolved oxygen exceeded the 15 minute holding time; and the pH buffer solution was expired;
4. 30 Texas Administrative Code §§ 305.125(1) and 319.11(d) and TPDES Permit No. WQ0010051001, Monitoring and Reporting Requirements No. 5 and Other Requirements No. 5.f, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at Facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually. Specifically, the parallel storm water treatment system (peak flow clarifier) secondary effluent flow meter was not calibrated within the previous 12 months;
5. 30 Texas Administrative Code § 305.125(5) and TPDES Permit No. WQ0010051001, Operational Requirements No. 1, by failing to provide or make available a self-contained breathing apparatus (SCBA) for use by Facility personnel;
6. 30 Texas Administrative Code § 305.125(5) and TPDES Permit No. WQ0010051001, Operational Requirements No. 1, by failing to ensure that the Facility and all its systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the access-ways serving the East Young and Meadowlawn lift stations were severely corroded or damaged; the vents serving the Henry, Mocking Bird, and Blueberry lift stations were not screened; Clarifier Nos. 1 and 2 were not equipped with safety chains or rails; and the fence serving the Facility was not intruder resistant, as evidenced by a large gap of approximately 10 to 12 inches under the fence at the peak flow clarifier chlorine contact chamber;
7. 30 Texas Administrative Code § 305.125(5) and TPDES Permit No. WQ0010051001, Operational Requirements No. 1, by failing to ensure that the Facility and all its systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the return activated sludge (RAS) valves entering Aeration Basin Nos. 1 and 2 were severely corroded and inoperable; the surface scum removal system serving Clarifier Nos. 1 and

2 was not being properly operated; the catwalk on Clarifier No. 3 was corroded; there was excessive scum and solids carryover in the chlorine contact chamber; the sludge rake motor was corroded and inoperable; the scales for the sulfur dioxide and gaseous chlorination system were inoperable; the peak flow clarifier bar screen was damaged; the peak flow clarifier grit removal system was severely corroded and inoperable and the grit chamber was filled to approximately two-thirds its capacity; and the peak flow clarifier sludge rake was corroded and there was no sludge rake drive motor; and

8. 30 Texas Administrative Code § 305.125(1), Texas Water Code § 26.121(a)(1), and TPDES Permit No. WQ0010051001, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with permitted effluent limits. Specifically, the five-day biochemical oxygen demand daily maximum concentration exceeded the permitted limit of 25 milligrams per liter (“mg/L”) for the monitoring period ending October 31, 2011 (29.9 mg/L).

In his EDPRP, the ED alleged that Bridge City failed to prevent an unauthorized discharge from the sludge dewatering box and violated operational and maintenance requirements by not having a self-contained breathing apparatus (SCBA) available at the WWTP. Regarding the lack of an SCBA, the ALJ and the parties discussed at the conclusion of the evidentiary hearing the extent of Bridge City’s stipulation. Bridge City contended that it was not disputing the fact that an SCBA was not affixed to a structure at the WWTP, but argued that it was unaware of the applicability of such a requirement to the Facility. On the other hand, the ED understood that, based on the parties’ joint stipulations, Bridge City had stipulated to an actual legal violation and not just to the facts. Given the confusion as to whether Bridge City had stipulated to an actual violation of its permit and the TCEQ’s rules, the ALJ determined that the SCBA allegation should be treated as a contested issue and allowed the parties to brief the legal issue in their written closing arguments.

B. Unauthorized Discharge from the Sludge Dewatering Box

1. ED's Allegation and Evidence

Scott Griffith, a TCEQ field investigator, inspected the WWTP on May 25 and 26, 2011. During his inspection, he noted the ponding of liquid outside the secondary containment area of the WWTP's sludge dewatering boxes,³ which are designed to drain the liquid from sludge prior to transport. The area of the liquid was within the Facility, near the sludge drying beds. Mr. Griffith testified that liquid from the box could have escaped from a valve or port on the bottom of the box, but he did not take a sample of the liquid he saw on the ground. On the basis of this inspection, the ED alleged in his EDPRP that Bridge City failed to prevent an unauthorized discharge in violation of Texas Water Code § 26.121(a)(1), 30 Texas Administrative Code § 305.125(1), and TPDES Permit No. WQ0010051001 Permit Condition No. 2.g.

Mr. Griffith testified that he spoke with Mr. Merino, an operator at the WWTP, about the liquid. According to Mr. Griffith, Mr. Merino indicated that the liquid was "the pooling of water from the process of removing the dewatering box." Mr. Merino did not seem surprised that the liquid was there, and Mr. Griffith discussed with Mr. Merino that "it needed to be addressed." During the hearing, Mr. Griffith stated that "every indication during [his] conversation" with Mr. Merino "lead [him] to believe" that the liquid came from inside the box. However, Mr. Griffith conceded that Mr. Merino did not actually say that the liquid came from inside the dewatering box. Mr. Griffith further testified that the liquid on the ground could be consistent with fresh water used to wash down a truck's tire, but Mr. Merino did not act as if the liquid was wash water during the conversation.

³ ED Ex. 1K at 239.

2. Bridge City's Argument and Evidence

Jerry Jones, the city manager for Bridge City, testified that it is unlikely that waste “sloshed” out of the dewatering box and onto the ground as argued by Mr. Griffith. According to Mr. Jones, the dewatering box is typically filled with “wet” sludge, and the sludge is allowed to dry out. There are valves at the bottom of the box that close up when the box is moved. Mr. Jones testified that a sludge-disposal company would not attempt to transport a dewatering box if there was liquid “sloshing around” inside the box. Therefore, Mr. Jones could not believe that “solids sloshed out of the unit.” If any sludge had spilled out of the box, it would have been scooped up and placed back into the box.

Mike Lund is an assistant supervisor for Bridge City and testified about the daily practice of transporting the sludge dewatering box from the WWTP to the landfill. According to Mr. Lund, a sludge dewatering box is like a dumpster, with ports on the bottom to drain the accumulated liquid. When a box is ready for transport, a truck will back-up to the sludge dewatering box, and the truck's tires are typically washed at this point to remove gravel or mud. Mr. Lund testified that the ED's pictures of the liquid on the ground are consistent with wash water, and he doubted the liquid came from the dewatering box.

According to Mr. Lund, before sludge is accepted for disposal at a landfill, it must pass a paint filter test that indicates the moisture content of the sludge. If sludge is too moist, the landfill would refuse acceptance of the sludge and the sludge would be transported back to the WWTP. For this reason, Mr. Lund has not heard of or experienced any problems with the “sloshing” of liquids from a dewatering box.

3. ALJ's Analysis

The ALJ concludes that the ED did not meet his burden of proof on this issue. To prove this violation, the ED relies on Mr. Griffith's recollection of a conversation that took place over 2 years ago with Mr. Merino, the WWTP's operator. Mr. Griffith testified that Mr. Merino did not actually

say that the liquid came from inside the dewatering box. Instead, Mr. Griffith “was led to believe” during his conversation with Mr. Merino that the box was the source of the liquid. In the ALJ’s opinion, this evidence is outweighed by the fact that, as Mr. Griffith testified, the pictures of the liquid on the ground are as consistent with liquid from washing a truck’s tires as they are with liquid from a dewatering box.⁴ Mr. Lund testified that washing the truck tires is a daily practice at the WWTP and the washing takes place where Mr. Griffith observed the liquid on the ground. Further, Mr. Griffith consistently testified that Mr. Merino told him that the liquid came from “the process” of removing the dewatering boxes, which could encompass the washing of truck tires before the boxes were removed boxes.

In the ALJ’s opinion, it is just as plausible that the liquid came from the washing of truck tires as from the dewatering box. Therefore, the ALJ concludes that for this violation, the preponderance of the evidence does not show that a discharge occurred as pleaded by the ED.

C. Lack of an SCBA

1. ED’s Allegation and Evidence

During his May 25 and 26, 2011 inspection, Mr. Griffith determined that Bridge City “fail[ed] to provide or make available [an SCBA] for use by plant personnel. At the time of the investigation it was noted, [an SCBA] was not provided at the facility should an emergency arise with the gaseous chlorination facilities or sulfur dioxide facilities.”⁵ Mr. Griffith recommended that Bridge City “[o]btain and locate the SCBA at a safe distance from and outside the feed facilities.”⁶

Based on the May 2011 inspection, the ED alleged that Bridge City violated 30 Texas Administrative Code § 305.125(5) and TPDES Permit Operational Requirement No. 1 because

⁴ ED Ex. 1K at 239.

⁵ ED Ex. 1 at 29.

⁶ ED Ex. 1 at 29.

the city did not have an SCBA available for its personnel.⁷ These provisions generally require a permittee to appropriately operate and maintain the WWTP. Specifically, section 305.125(c) requires that “[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. . . .”⁸ TPDES Permit Operational Requirement No. 1 states, in full:

The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control such as the Commission’s “Recommendations for Minimum Process Control Tests for Domestic Wastewater Treatment Facilities.” Process control records shall be retained at the facility site and/or shall be readily available for review by a TNRCC representative for a period of three years.⁹

At the conclusion of the evidentiary hearing and in his closing arguments, the ED asserted that an SCBA is required under the TCEQ’s design criteria for domestic wastewater systems.¹⁰ Section 217.278 of the TCEQ’s rules provides:

An area used for handling pressurized gases must have respiratory and protective equipment that meets the requirements of the National Institute for Occupational Safety and Health.

- (A) The respiratory equipment must be immediately accessible and included in the facility’s operation and maintenance manual.
- (B) The storage of respiratory equipment in any room where gas under pressure is stored or used is prohibited.

⁷ ED Ex. A at 4-5 (EDPRP 6.f.).

⁸ 30 Tex. Admin. Code § 305.125(5).

⁹ ED Ex. 2 at 11 (TPDES Permit at 9).

¹⁰ ED Initial Closing Argument at 7.

- (C) Instructions for using the respiratory equipment must be kept with or posted next to the equipment.
- (D) The respiratory equipment must use compressed air and must have at least a 30-minute capacity.¹¹

According to the ED, the design criteria require an owner to “make available appropriate protective equipment for breathing”¹² and that “[a]ll protective equipment . . . must be stored near but outside a chemical storage area.”¹³ The ED also alleges that the industry standard regarding an SCBA is reflected in the Texas A&M Engineering Extension Service’s (TEEX) training manual, which states that the “TCEQ requires a self-contained breathing apparatus on site.”¹⁴ On the basis of these design and industry standards, the ED contends that Bridge City had notice that an SCBA was required to be on-site at the Facility.

2. Bridge City’s Argument and Evidence

Bridge City takes the position that an SCBA was in fact available for its employees at the WWTP. Mr. Jones testified that the SCBA was located in the truck the city used to transport employees to and from its WWTP and lift stations. Therefore, the SCBA was always available in the event of a leak or an emergency.

Furthermore, Bridge City asserts that it did not have notice that it was required to have an SCBA affixed to a structure at its WWTP. The city points out that the ED has never indicated in prior inspections that an SCBA was required at an open-air facility and had to be affixed to a structure. Although Bridge City had been inspected four times prior to the May 2011 inspection, the inspection reports do not mention an SCBA violation, and Bridge City was not informed that an

¹¹ 30 Tex. Admin. Code § 217.278(d)(2).

¹² 30 Tex. Admin. Code § 217.324(a).

¹³ 30 Tex. Admin. Code § 217.324(c).

¹⁴ ED Ex. 35 at 3. The TEEX manual excerpt was attached to the ED’s Initial Closing Argument. The ED did not offer this exhibit at hearing because he thought that Bridge City had stipulated to this violation. The issue was discussed at the evidentiary hearing and Bridge City did not object when the ED included the TEEX manual excerpt in his closing arguments as an exhibit. Therefore, the ALJ admits ED Ex. 36 into the evidentiary record.

SCBA was required. According to Mr. Lund, he was told that an SCBA was not required at an open-air facility, and Bridge City asserts that it has still not seen such a requirement.¹⁵

3. ALJ's Analysis

Pursuant to the parties' Amended Joint Stipulations, it is undisputed that Bridge City did not have an SCBA available at the WWTP.¹⁶ In his EDPRP, the ED alleged that this lack of an SCBA violated section 305.125(5) of the TCEQ's rules and Operational Requirement No. 1 of the TPDES Permit.¹⁷ He did not allege a violation of the TCEQ's design criteria found in chapter 217 of the Commission's rules.

The requirement to have an SCBA available is found in the TCEQ's design criteria in chapter 217.¹⁸ The two provisions actually pleaded by the ED generally require a permittee to properly maintain and operate a WWTP, but they do not require compliance with current design criteria or incorporate such requirements by reference. Therefore, the ALJ concludes that the ED did not meet his burden of proof on this issue because he did not plead a violation of the TCEQ's design criteria, having only pleaded a violation of the Commission's general operational and maintenance requirements.

The design criteria found in chapter 217 of the TCEQ's rules apply to a "person who *proposes to construct, renovate, or re-rate* a commission permitted wastewater treatment facility"¹⁹ As stated in the rules, occupational safety and health hazards and risks to workers and the public are to "be addressed *in the design of* . . . [the] treatment facility equipment and

¹⁵ Bridge City Written Argument at 2.

¹⁶ Although Bridge City had an SCBA in the truck used to transport its employees to and from the WWTP, the city stipulated that it "fail[ed] to provide or make available [an SCBA] for use by Facility personnel." ED Ex. 37 at 2 (Amended Joint Stipulation No. 2.e.).

¹⁷ ED Ex. A at 4.

¹⁸ 30 Tex. Admin. Code §§ 217.278, 217.324.

¹⁹ 30 Tex. Admin. Code § 217.1(a) (emphasis added).

processes,”²⁰ and that design is subject to the ED’s plans and specifications review.²¹ The design criteria are not general operational and maintenance requirements that apply to every permittee; once adopted, the criteria apply to those permittees who propose to materially alter or expand a WWTP.²²

For the reasons stated in this proposal for decision, the ALJ does not recommend the adoption of any findings of fact or conclusions of law that Bridge City violated 30 Texas Administrative Code § 305.125(5) and TPDES Permit Operational Requirement No. 1 by not having an SCBA available at the Facility. The ED did not prove that Bridge City failed to properly operate and maintain the WWTP, as he alleged in the EDPRP.

D. Penalty Amount

1. Bridge City’s Position

During the evidentiary hearing and in the Amended Joint Stipulations, Bridge City agreed that the ED’s proposed penalty of \$86,050 was properly calculated in compliance with chapter 7 of the Texas Water Code and the rules and penalty policies of the TCEQ.²³ However, the city asks the Commission to reduce the penalty amount by taking into account the natural disasters that have devastated the city, as well as its good faith efforts in remedying the violations.²⁴

According to Mr. Jones, its city manager, Bridge City is a small community that was battered by Hurricane Rita²⁵ and Hurricane Ike.²⁶ These natural disasters severely impacted the residents of

²⁰ 30 Tex. Admin. Code § 217.321(b) (emphasis added).

²¹ 30 Tex. Admin. Code §§ 217.5-217.8.

²² Compare 30 Tex. Admin. Code § 217.1(a) (chapter 217 applies to a “person who proposes to construct, renovate, or re-rate a . . . commission permitted wastewater treatment facility”), with 30 Tex. Admin. Code § 305.125 (section 305.125 contains “[c]onditions applicable to all permits issued under [chapter 305]”).

²³ ED Ex. 37 at 3.

²⁴ Bridge City stated during the evidentiary hearing that it is not asserting an inability to pay the recommended administrative penalty.

²⁵ Hurricane Rita made landfall on September 25, 2005.

²⁶ Hurricane Ike made landfall on September 13, 2008.

Bridge City,²⁷ as well as the city's wastewater system. Mr. Jones testified that during Hurricane Ike, the entire collection system was inundated with saltwater, as was the WWTP. In fact, every home in Bridge City was impacted by the saltwater and storm surge. However, Bridge City had its WWTP back online within 30 days after the saltwater receded.

Mr. Jones testified that this saltwater had an extremely corrosive effect on the entire wastewater system. All the electrical and many of the metal components had to be replaced. However, according to Mr. Jones, the WWTP and collection system still suffer from the corrosive effect of the saltwater inundation.

Furthermore, Mr. Jones pointed out that the WWTP is an aging plant that presents unique design challenges. For example, he testified that instead of purchasing prefabricated replacement parts, any part needing repair must be individually manufactured, making repairs more expensive and time-consuming.

Bridge City estimates that it has spent in excess of \$6 million making repairs to its wastewater collection and treatment system, much of that money coming from grants. Mark Kelly, a consulting engineer, assisted Bridge City in securing grant monies after Hurricane Ike. He testified that it took a long time for the city to receive the grant funds, and Bridge City received the first grant money in March 2010. However, those funds could not initially be used at the WWTP because of its location in a flood plain. It was only much later that residual funds from the initial round of grants were approved for use on the WWTP, and Bridge City is still making repairs, according to Mr. Kelly.

Bridge City also contends that it has addressed the violations by implementing many of the ED's recommendations. For example, Bridge City has enacted a grease ordinance to prevent suspended solids from entering the collection system, and the WWTP has been repaired to prevent future violations. The city has also taken steps to limit its infiltration problems and has repaired or replaced 80% of its collection system. Bridge City has already completed most of the corrective

²⁷ Bridge City Exs. A-D.

action proposed by the ED,²⁸ and Bridge City expects to have the remaining work completed within 6 months, depending on the weather. Bridge City asserts that it has and will continue to act in good faith.

According to Bridge City, it has also addressed its reporting violations. Mr. Lund testified that the city has implemented new procedures regarding paperwork, and Bridge City has changed laboratories so that it can receive sample results in a more timely fashion.

In addition, Bridge City argues that the evidence demonstrates that it can do a proper job of treating waste. In the past, the ED asked Bridge City to take over a private sewer system serving the Waterwood subdivision located in the city's extraterritorial jurisdiction. Mr. Jones testified that the city had to expend municipal funds to connect this subdivision to the city's wastewater collection system. According to Bridge City, the ED would not have made this request if the city could not properly collect and treat the wastewater.

In sum, it is Bridge City's position that justice requires the downward adjustment of the ED's recommended penalty. The city has been severely impacted by two major hurricanes, and it has acted in good faith to make the necessary repairs to ensure compliance with its permit, the TCEQ's rules, and Texas's statutes.

²⁸ Bridge City Exs. E-H. The ED and Bridge City have stipulated to the corrective action requirements to be included in the ordering provisions of any Commission order. ED Ex. 19.

2. ED's Position

Lanae Ford, a TCEQ enforcement coordinator, testified that Bridge City should be assessed an administrative penalty of \$86,050.²⁹ As pointed out by the ED, Bridge City does not dispute that the penalty was properly calculated in accordance with chapter 7 of the Texas Water Code and the TCEQ's rules and penalty policies.³⁰ Further, as Ms. Foard testified, the ED has considered Hurricanes Rita and Ike in recommending an appropriate penalty in this case.

According to Ms. Foard, Bridge City has been inspected five times, both before and after the hurricanes, and each investigation revealed numerous violations.³¹ For example, in 2006, Bridge City was referred to enforcement for effluent violations, and the ED entered into a compliance agreement to address the violations without the necessity of an order and penalty.³² A subsequent investigation in 2009 resulted in Bridge City's referral to enforcement, and the ED administratively resolved those violations.³³

Further, the ED notes that many of the same types of violations occurred before as well as after the hurricanes. As Mr. Griffith testified, the Bridge City WWTP has repeatedly discharged grease and solids to the receiving stream since 2001.³⁴ In 2006, before Hurricane Ike, Bridge City discharged sludge to the stream,³⁵ and discharged sludge again in 2012.³⁶ Ms. Foard further testified

²⁹ ED Initial Closing Argument at 8. In his EDPRP, the ED requested the assessment of an \$87,925 administrative penalty. ED Ex. A at 6.

³⁰ Both the 2002 Penalty Policy and the 2011 Penalty Policy apply in this proceeding. The violations associated with the May 2011 inspection occurred before the effective date of the 2011 Penalty Policy, and the violations found by the January 2012 record review occurred after the effective date of the 2011 Penalty Policy. ED Exs. 5, 6.

³¹ ED Ex. 14 (2002 investigative report); ED Ex. 15 (2004 investigative report); ED Ex. 16 (2006 investigative report); ED Ex. 17 (2009 investigative report); ED Ex. 18 (2012 investigative report).

³² ED Ex. 28.

³³ ED Exs. 29, 30.

³⁴ See also ED Exs. 14-18.

³⁵ ED Ex. 16 at 8-10.

³⁶ ED Ex. 18 at 11.

that many of the violations are unrelated to the two hurricanes, such as Bridge City's failure to submit compliance notifications, to install flow measurement devices, to calibrate the dissolved oxygen meter, to annually calibrate the parallel storm water treatment system secondary effluent flow meter, to screen vents at its lift stations, and to have an intruder-resistant fence at the WWTP.

The ED also argues that the city has delayed implementing the corrective action needed to remedy the violations. The ED contends that Bridge City chose to wait and attempt to obtain grant funds to cover the costs of repairs instead of paying for the necessary repairs out of its own money. The ED maintains that this economic decision is not a mitigating factor that justifies lowering the recommended penalty.³⁷ Further, the delays associated with obtaining and using the grant funds required the city to wait until July of 2012 to begin accepting bids, which is 1 year after the investigation in this case and 4 years after Hurricane Ike.

Paige Seidenberger, TCEQ financial analyst, reviewed Bridge City's audited financial statements from September 2009 to September 2012. She testified that during this timeframe, Bridge City had the funds necessary to pay for the needed corrective action and to pay the recommended penalty of \$86,050.

3. ALJ's Analysis

As an initial matter, the ALJ recommends a reduction of the ED's proposed penalty of \$86,050 by the amount associated with the two violations contested in this case. The ED calculated that \$6,475 was the appropriate penalty for the sludge dewatering box violation³⁸ and \$12,949 was the appropriate penalty for the SCBA violation.³⁹ Because the ED did not meet his burden of proof on those two violations, the ALJ recommends that the proposed penalty be reduced to \$66,626.⁴⁰

³⁷ ED Initial Closing Argument at 11.

³⁸ ED Ex. 5 at 7.

³⁹ ED Ex. 5 at 13.

⁴⁰ \$86,050 - \$6,475 - \$12,949 = \$66,626.

However, the ALJ does not recommend any additional reduction to the ED's proposed penalty. Bridge City has stipulated that the ED's proposed administrative penalty complies with chapter 7 of the Texas Water Code and the TCEQ's penalty policies and rules.⁴¹ Further, many of the violations pre-date the two hurricanes and are unrelated to those storms. The city has not argued that it is unable to pay the penalty and the ED has shown that Bridge City has the necessary funds to pay the recommended penalty. Although the ALJ is well aware of the devastation wrought by these two storms and is sympathetic to the city's plight, this does not serve as a basis for the ALJ to recommend a lower penalty amount.

E. Technical Requirements

The ED and Bridge City have agreed to the technical requirements to include in the Order resulting from this proceeding. Those technical requirements are found in ED Exhibit 19, and the ALJ has included those requirements in the proposed order attached to this proposal for decision.

However, Bridge City disagrees with the ED's recommendation that Bridge City "[r]epair or replace the inoperable or corroded components of the peak flow clarifier" within 90 days of the effective date of the order.⁴² Bridge City requests that it be allowed 6 months to meet this requirement, but the ED maintains that 90 days is sufficient for the city to meet this technical requirement given the amount time between the evidentiary hearing and the entry of a final order.

The ALJ recommends that the Commission grant Bridge City's request and allow Bridge City 180 days from the effective date of the Order to meet this technical requirement. Bridge City has already met most of the agreed technical requirements and has demonstrated good faith throughout this proceeding. The city has stipulated to the validity of all but two of the violations and to the propriety of the calculation of the recommended penalty. The ALJ concludes that Bridge City is in the best position to estimate when it can reasonably expect to complete repairs

⁴¹ ED Ex. 37 at 3 (Amended Joint Stipulation No. 3).

⁴² ED Ex. 19 at 1 (Technical Requirement No. 1.c.ii.). This technical requirement is found in Ordering Provision No. 3 of the proposed order attached to this proposal for decision.

and the city's 6-month request is reasonable. Therefore, the ALJ recommends that the Commission grant this request.

Accordingly, the ALJ has included in the Ordering Provisions of the proposed order a requirement that Bridge City repair or replace the inoperable or corroded components of the peak flow clarifier within in 180 days.⁴³ Although Bridge City asked for 6 months to meet this requirement, the ALJ recommends a 180-day compliance deadline for consistency with the other compliance deadlines, which are expressed in days and not months. In addition, the ALJ has changed the compliance certification deadline from 105 days to 195 days to accommodate the additional time required for compliance with the peak flow clarifier technical requirement.⁴⁴

The ALJ also recommends a non-substantive change to the parties' agreed technical requirements. In the proposed order, the ALJ deleted the parties' Technical Requirement No. 1.b. This requirement referred to Technical Requirement Nos. 1.a.i. and 2.a.ii.; however, the parties struck through those two technical requirements in ED Exhibit 19. Therefore, the ALJ deleted the provision that would require Bridge City to submit written certification that it has complied with the two stricken technical requirements.

III. SUMMARY

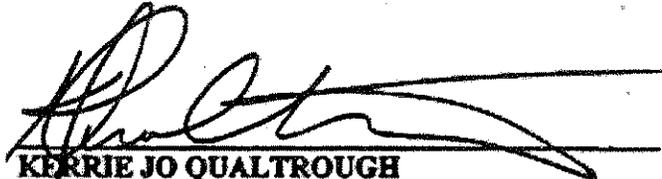
As stated in this proposal for decision, the ALJ recommends that the Commission assess an administrative penalty of \$66,626 against the City of Bridge City and order the city to comply with the technical requirements contained in the Ordering Provisions of the attached proposed order. The penalty amount was properly calculated and reflects the violations demonstrated by the evidentiary record. Furthermore, the ALJ recommends that the Commission not assess an administrative penalty for the violations alleged by the ED regarding an unauthorized discharge in the area of the sludge

⁴³ This technical requirement is found in Ordering Provision No. 3 of the proposed order attached to this proposal for decision.

⁴⁴ This technical requirement is found in Ordering Provision No. 4 of the proposed order attached to this proposal for decision.

dewatering box and the failure to have an SCBA available at the WWTP. It is the ALJ's opinion that the ED did not meet his burden of proving those two allegations.

SIGNED January 8, 2014.



KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST THE CITY OF BRIDGE CITY TCEQ DOCKET NO. 2011-1907-MWD-E SOAH DOCKET NO. 582-13-4773

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against the City of Bridge City (Respondent). Kerrie Jo Qualtrough, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted an evidentiary hearing on this matter on October 24 and 28, 2013, in Austin, Texas, and presented the proposal for decision.

The following are parties to the proceeding: The Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Respondent owns and operates a wastewater treatment facility located on Bower Drive, approximately 2,000 feet southeast of the State Highway 87 bridge over Cow Bayou in Bridge City, Orange County, Texas (Facility).

2. On January 7, 2000, the Texas Natural Resource Conservation Commission issued TPDES Permit No. WQ0010051001 to Respondent. This permit is still in effect.
3. The ED conducted an investigation on May 25 and 26, 2011, and documented violations.
4. The ED conducted a record review on January 31, 2012, and documented violations.
5. On May 25 and 26, 2011, there was sludge in the receiving stream ranging from 3 to 8 inches thick that extended from approximately 10 yards downstream of the outfall to over 100 yards downstream. Samples collected from the receiving stream indicated elevated levels of pollutants.
6. Respondent failed to submit noncompliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more for the monitoring periods ending May 31, 2010, and November 30, 2010.
7. On May 25, and 26, 2011, Respondent failed to comply with test procedures for the analysis of pollutants. The primary flow measurement device was not installed as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the ED; the dissolved oxygen meter was not calibrated monthly; samples for chlorine residual, pH, and dissolved oxygen exceeded the 15 minute holding time; and the pH buffer solution had expired.
8. On May 25 and 26, 2011, Respondent failed to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at Facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually. The parallel storm water treatment system (peak flow clarifier) secondary effluent flow meter was not calibrated within the previous 12 months.
9. On May 25 and 26, 2011, Respondent failed to ensure that the Facility and all its systems of collection, treatment, and disposal were properly operated and maintained. The access-ways serving the East Young and Meadowlawn lift stations were severely corroded or damaged; the vents serving the Henry, Mocking Bird, and Blueberry lift stations were not screened; Clarifier Nos. 1 and 2 were not equipped with safety chains or rails; and the fence serving the Facility was not intruder resistant, as evidenced by a large gap of approximately 10 to 12 inches under the fence at the peak flow clarifier chlorine contact chamber.
10. On May 25 and 26, 2011, Respondent failed to ensure that the Facility and all its systems of collection, treatment, and disposal were properly operated and maintained. The return activated sludge (RAS) valves entering Aeration Basin Nos. 1 and 2 were severely corroded and inoperable; the surface scum removal system serving Clarifier Nos. 1 and 2 was not being properly operated; the catwalk on Clarifier No. 3 was corroded; there was excessive scum and solids carryover in the chlorine contact chamber; the sludge rake motor was corroded and inoperable; the scales for the sulfur dioxide and gaseous

chlorination system were inoperable; the peak flow clarifier bar screen was damaged; the peak flow clarifier grit removal system was severely corroded and inoperable and the grit chamber was filled to approximately two-thirds its capacity; and the peak flow clarifier sludge rake was corroded and there was no sludge rake drive motor.

11. On May 25 and 26, 2011, Respondent failed to comply with permitted effluent limits. The five-day biochemical oxygen demand daily maximum concentration exceeded the permitted limit of 25 milligrams per liter (mg/L) for the monitoring period ending October 31, 2011 (29.9 mg/L).
12. On May 25 and 26, 2011, there was an unidentified liquid on the ground outside the secondary containment area near the sludge dewatering boxes.
13. On May 25 and 26, 2011, Respondent did not provide or make available a self-contained breathing apparatus (SCBA) for use by Facility personnel.
14. Respondent stipulated to the corrective action proposed by the ED, but requested 6 months from the effective date of this Order to repair or replace the inoperable or corroded components of the peak flow clarifier. It is reasonable to allow Respondent 6 months from the effective date of this Order to complete this requirement.
15. On March 28, 2013, the ED issued his EDPRP.
16. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
17. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2011.
18. The ED recommends the imposition of an administrative penalty in the amount of \$86,050 and corrective action to bring the Facility into compliance.
19. On April 26, 2013, Respondent requested a contested case hearing on the allegations in the EDPRP.
20. On May 29, 2013, the case was referred to SOAH for a hearing.
21. On June 18, 2013, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
22. ALJ Kerrie Jo Qualtrough convened the hearing on the merits on October 24 and 28, 2013, in SOAH's hearing rooms in Austin, Texas.
23. The ED was represented by staff attorney Jennifer Cooke, and Respondent was represented by attorney Paul M. Fukuda.

24. The parties submitted closing arguments on November 4, 2013, with responses due on November 12, 2013. The evidentiary record closed on November 12, 2013.
25. On December 9, 2013, the ALJ withdrew ED Exhibit 34 from the evidentiary record and admitted ED Exhibit 37, without objection from the parties.

II. CONCLUSIONS OF LAW

1. The Commission may assess an administrative penalty against a person who violates a provision of the Texas Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder. Tex. Water Code § 7.051.
2. Respondent is subject to the Commission's enforcement authority. Tex. Water Code § 7.002.
3. Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, and the penalties and the corrective action proposed therein. Tex. Water Code § 7.055; 30 Tex. Admin. Code §§ 1.11, 70.104,
4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051, 2001.052; Tex. Water Code § 7.058; 1 Tex. Admin. Code § 155.27; 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 70.104, 80.6.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. 30 Tex. Admin. Code § 80.17(d).
7. As shown by the findings of fact, Respondent violated Texas Water Code § 26.121; 30 Texas Administrative Code §§ 305.125(1), 305.125(5), and 319.11; and TPDES Permit No. WQ0010051001 Permit Condition No. 2.d., Effluent Limitations and Monitoring Requirement Nos. 1 and 4, Monitoring and Reporting Requirement Nos. 2, 5, and 7.c., Operational Requirement No. 1, and Other Requirement No. 5.f.
8. The ED did not meet his burden of proving that Respondent failed to prevent an unauthorized discharge in violation of Texas Water Code § 26.121(a)(1), 30 Texas Administrative Code § 305.125(1), and TPDES Permit No. WQ0010051001 Permit Condition No. 2.g.
9. The ED did not meet his burden of proving that Respondent failed to provide or make a

SCBA available for use by Facility personnel in violation of 30 Texas Administrative Code § 305.125(5) and TPDES Permit No. WQ0010051001 Operational Requirement No. 1.

10. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors, including the violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons; the nature, circumstances, extent, duration, and gravity of the prohibited act; the history and extent of previous violations by the violator; the violator's degree of culpability, good faith, and economic benefit gained through the violation; the amount necessary to deter future violations; and any other matters that justice may require.
11. Based on consideration of the above findings of fact, the factors set out in Texas Water Code § 7.053 and the Commission's Penalty Policies, a total administrative penalty of \$66,626 is justified and should be assessed against Respondent, and the Respondent should be required to implement the corrective action set out below.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The City of Bridge City is assessed an administrative penalty in the amount of \$66,626 for violation of Texas Water Code § 26.121; 30 Texas Administrative Code §§ 305.125(1), 305.125(5), and 319.11; and TPDES Permit No. WQ0010051001 Permit Condition No. 2.d., Effluent Limitations and Monitoring Requirement Nos. 1 and 4, Monitoring and Reporting Requirement Nos. 2, 5, and 7.c., Operational Requirement No. 1, and Other Requirement No. 5.f. The payment of this administrative penalty and the City of Bridge City's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: The City of Bridge City; Docket No. 2011-1907-MWD-E" to:

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

2. Within 90 days after the effective date of this Order, Respondent shall:
 - a. Develop and implement a solids management plan (SMP) to prevent future discharges of sludge into the receiving stream. The SMP shall include a program of internal process control testing to monitor the efficiency of the Facility and to maintain the proper solids balance. The SMP shall provide procedures designed as guidance for the operator to act on as a result of process control tests, to properly adjust the solids balance, and to determine sludge wasting rates;
 - b. Reinstall the flow meter as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the Executive Director; and repair or replace the RAS valves entering Aeration Basin Nos. 1 and 2;
 - c. Repair the scales serving the sulfur dioxide and the gaseous chlorination systems;
 - d. Replace the sludge thickener;
 - e. Calibrate the peak flow clarifier secondary effluent flow meter, in accordance with 30 Tex. Admin. Code § 319.11(d) and TPDES Permit No. WQ0010051001 Monitoring and Reporting Requirements No. 5; and
 - g. Submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010051001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported DMRs, demonstrating at least three consecutive months of compliance with all permitted effluent limitations, in accordance with Ordering Provision No. 6.
3. Within 180 days after the effective date of this Order, Respondent shall repair or replace the inoperable or corroded components of the peak flow clarifier.
4. Within 195 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 6 to demonstrate compliance with Ordering Provision Nos. 2 and 3.
5. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records,

shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations.”

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Ronald Hebert, Water Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Fwy.
Beaumont, TX 77703-1830

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
7. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
8. The effective date of this Order is the date the Order is final, as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
9. As required by Texas Water Code § 7.059, the Commission’s Chief Clerk shall forward a copy of this Order to Respondent.

10. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Issue Date:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Bryan W. Shaw, Ph.D., Chairman for the Commission