

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel
Dinniah Tadema, Assistant General Counsel

Thru: *JSR* Jess Robinson, Senior Attorney
Litigation Division

From: *CS* Cynthia Sirois, Staff Attorney
Litigation Division

Date: June 20, 2023

Subject: **Backup Revision**
June 28, 2023 Commission Agenda
Draft Item No. 15 - Sixto Delafuente and Martiza Delafuente
Docket No. 2021-0939-OSS-E

Enclosed please find the following:

Page 1 of Executive Summary
Complaint information has been corrected.

Respondent Contact:

Sixto Delafuente and Martiza Delafuente
127 Cotton Street
Jones Creek, Texas 77541

Redline and replacement copies are enclosed. Please do not hesitate to contact me at (512) 239-3392 if you have any questions regarding this matter.

cc: Cheryl Thompson, Enforcement Division
Westin Massey, Houston Regional Office
Gill Valls, Office of the General Counsel
Sheldon Wayne, Office of Public Interest Counsel
Michael Parrish, Enforcement Division
Leslie Gann, Enforcement Division
Stuart Beckley, Enforcement Division
Sixto Delafuente and Martiza Delafuente

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61067
Sixto Delafuente and Martiza Delafuente
RN111271391
Docket No. 2021-0939-OSS-E

Order Type:
Default Order

Media:
OSS

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
127 Cotton Street, Freeport, Brazoria County

Type of Operation:
on-site sewage facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third Parties: None

Texas Register Publication Date: May 5, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:
Person/CN - N/A (CN605896372);
Person/CN - N/A (CN605896380)
Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): ~~N/A~~ May 11, 2021

Complaint Information: Alleged that a septic system is overflowing

Date(s) of Investigation: June 2, 2021; July 9, 2021

Date(s) of NOV(s): June 17, 2021

Date(s) of NOE(s): July 9, 2021

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61067
Sixto Delafuente and Martiza Delafuente
RN111271391
Docket No. 2021-0939-OSS-E

Order Type:
Default Order

Media:
OSS

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
127 Cotton Street, Freeport, Brazoria County

Type of Operation:
on-site sewage facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third Parties: None

Texas Register Publication Date: May 5, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:
Person/CN - N/A (CN605896372);
Person/CN - N/A (CN605896380)
Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): May 11, 2021

Complaint Information: *Alleged that a septic system is overflowing.*

Date(s) of Investigation: June 2, 2021; July 9, 2021

Date(s) of NOV(s): June 17, 2021

Date(s) of NOE(s): July 9, 2021

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 61067
Sixto Delafuente and Martiza Delafuente
RN111271391
Docket No. 2021-0939-OSS-E

Order Type:
Default Order

Media:
OSS

Small Business:
N/A

Location(s) Where Violation(s) Occurred:
127 Cotton Street, Freeport, Brazoria County

Type of Operation:
on-site sewage facility

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third Parties: None

Texas Register Publication Date: May 5, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,312

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$1,312

Compliance History Classifications:

Person/CN - N/A (CN605896372);
Person/CN - N/A (CN605896380)
Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: January 28, 2021

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: June 2, 2021; July 9, 2021

Date(s) of NOV(s): June 17, 2021

Date(s) of NOE(s): July 9, 2021

Violation Information

Failed to properly maintain an On-Site Sewage Facility (OSSF), resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state. [TEX. WATER CODE § 26.121(a)(1), TEX. HEALTH & SAFETY CODE § 366.017(b), and 30 TEX. ADMIN. CODE § 285.70(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately after the effective date cease the unauthorized discharge of wastewater.
2. Within 15 days submit written certification of compliance with Technical Requirement No. 1.
3. Within 30 days properly clean and disinfect the affected area.
4. Within 45 days submit written certification of compliance with Technical Requirement No. 3.
5. Within 60 days conduct an evaluation of the OSSF to determine the cause of the authorized discharge of untreated wastewater and necessary corrective actions designed to prevent or minimize it.
6. Within 90 days complete any corrective actions identified in the performance of Technical Requirement No. 5.
7. Within 115 days submit written certification of compliance with Technical Requirement Nos. 5 and 6.

Litigation Information

Date Petition(s) Filed: January 20, 2023; February 06, 2023
Date(s) of Service: unclaimed; unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Cynthia Sirois, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, 817-588-5865
TCEQ Regional Contact: Westin Massey, Houston Regional Office, 713-767-3756
Respondent Contact: Sixto Delafuente and Martiza Delafuente, 127 Cotton Street, Jones Creek, Texas
77541
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	12-Jul-2021	Screening	19-Jul-2021	EPA Due	
	PCW	20-Jul-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Sixto Delafuente and Martiza Delafuente
Reg. Ent. Ref. No.	RN111271391
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61067	No. of Violations	1
Docket No.	2021-0939-OSS-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Alyssa Loveday
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Adjustment	Subtotals 2, 3, & 7	\$62
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Notes: Enhancement for one NOV with the same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$158
 Estimated Cost of Compliance: \$2,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,312
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$1,312
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,312
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,312
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Screening Date 19-Jul-2021

Docket No. 2021-0939-OSS-E

PCW

Respondent Sixto Delafuente and Martiza Delafuente

Policy Revision 5 (January 28, 2021)

Case ID No. 61067

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111271391

Media On-Site Sewage Disposal

Enf. Coordinator Alyssa Loveday

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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>)	1	5%
	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%
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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 19-Jul-2021

Docket No. 2021-0939-OSS-E

PCW

Respondent Sixto Delafuente and Martiza Delafuente

Policy Revision 5 (January 28, 2021)

Case ID No. 61067

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111271391

Media On-Site Sewage Disposal

Enf. Coordinator Alyssa Loveday

Violation Number 1

Rule Cite(s) Tex. Health & Safety Code § 366.017(b), 30 Tex. Admin Code § 285.70(a), and Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to properly maintain an On-Site Sewage Facility ("OSSF"), resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, the conventional septic system was not properly maintained to prevent the discharge of sewage, and there was a sewage odor noted on the property where the sewage was discharging.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which did not exceed levels protective of human health or the environment as a result of the violation.

Adjustment \$3,750

\$1,250

Violation Events

Number of Violation Events 1 10 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One monthly event is recommended from the July 9, 2021 record review date to the July 19, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$158

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

Economic Benefit Worksheet

Respondent Sixto Delafuente and Martiza Delafuente
Case ID No. 61067
Reg. Ent. Reference No. RN111271391
Media On-Site Sewage Disposal
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	\$1,000	2-Jun-2021	14-Jul-2022	1.12	\$56	n/a	\$56
Other (as needed)	\$1,000	2-Jun-2021	22-Oct-2022	1.39	\$69	n/a	\$69
Other (as needed)	\$500	2-Jun-2021	22-Sep-2022	1.31	\$33	n/a	\$33

Notes for DELAYED costs

Remediation/Disposal cost is the estimated amount to properly clean and disinfect the affected area. The Date Required is the date the violation was initially documented. The Final Date is the estimated date of compliance.

The first Other cost is the estimated amount to conduct an evaluation of the OSSF to determine the cause of and necessary corrective actions designed to prevent or minimize the unauthorized discharge of untreated wastewater. The Date Required is the date the violation was initially documented. The Final Date is the estimated date of compliance.

The second Other cost is the estimated amount to cease the unauthorized discharge of wastewater. The Date Required is the date the violation was initially documented. The Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$158

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Compliance History Report

Compliance History Report for CN605896372, RN111271391, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605896372, Sixto Delafuente **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN111271391, 127 COTTON ST **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 127 Cotton Street, Freeport, Texas

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):
WATER QUALITY NON PERMITTED ID NUMBER R
 111271391

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: July 13, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 13, 2016 to July 13, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Alyssa Loveday **Phone:** (512) 239-5504

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**
N/A
- E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

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

1	Date: 06/17/2021 (1724795)		
	Self Report? NO	Classification:	Moderate
	Citation: 30 TAC Chapter 285, SubChapter G 285.70(a) 5B THSC Chapter 366, SubChapter A 366.017(b)		
	Description: Failure to maintain a properly functioning OSSF system.		
	Self Report? NO	Classification:	Moderate
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)		
	Description: Failure to prevent the unauthorized discharge of wastewater.		

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

Component Appendices

Appendix A

All NOVs Issued During Component Period 7/13/2016 and 7/13/2021

1	Date: 06/17/2021 (1724795)	Classification: Moderate
	Self Report? NO	Moderate
	Citation: 30 TAC Chapter 285, SubChapter G 285.70(a) 5B THSC Chapter 366, SubChapter A 366.017(b)	Moderate
	Description: Failure to maintain a properly functioning OSSF system.	Moderate
	Self Report? NO	Moderate
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)	Moderate
	Description: Failure to prevent the unauthorized discharge of wastewater.	Moderate

* NOVs applicable for the Compliance History rating period 9/1/2015 to 8/31/2020

Appendix B

All Investigations Conducted During Component Period July 13, 2016 and July 13, 2021

	(1738892)
Item 1	July 09, 2021

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

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Compliance History Report

Compliance History Report for CN605896380, RN111271391, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605896380, MARTIZA DELAFUENTE **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN111271391, 127 COTTON ST **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 127 Cotton Street, Freeport, Texas

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):
WATER QUALITY NON-PERMITTED ID NUMBER R
 111271391

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: July 13, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 13, 2016 to July 13, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Alyssa Loveday **Phone:** (512) 239-5504

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five-year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
 N/A

B. Criminal convictions:
 N/A

C. Chronic excessive emissions events:
 N/A

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

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

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

- 1 Date: 06/17/2021 (1724795)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 285, SubChapter G 285.70(a) 5B THSC Chapter 366, SubChapter A 366.017(b)
 - Description: Failure to maintain a properly functioning OSSF system.
 - Self Report? NO Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent the unauthorized discharge of wastewater.

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

Component Appendices

Appendix A

All NOVs Issued During Component Period 7/13/2016 and 7/13/2021

1	Date: 06/17/2021 (1724795)	Classification: Moderate
	Self Report? NO	Moderate
	Citation: 30 TAC Chapter 285, SubChapter G 285.70(a) 5B THSC Chapter 366, SubChapter A 366.017(b)	
	Description: Failure to maintain a properly functioning OSSF system.	Classification: Moderate
	Self Report? NO	Moderate
	Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)	
	Description: Failure to prevent the unauthorized discharge of wastewater.	

* NOVs applicable for the Compliance History rating period 9/1/2015 to 8/31/2020

Appendix B

All Investigations Conducted During Component Period July 13, 2016 and July 13, 2021

	(1738892)
Item 1	July 09, 2021

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SIXTO DELAFUENTE AND
MARTIZA DELAFUENTE;
RN111271391

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2021-0939-OSS-E

On _____, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Sixto Delafuente and Martiza Delafuente (“Respondents”).

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents constructed, installed, altered, and/or repaired, an unauthorized On-Site Sewage Facility (“OSSF”), as defined in 30 TEX. ADMIN. CODE § 285.2(45), at 127 Cotton Street in Freeport, Brazoria County, Texas (the “Site”).¹ The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on and around June 2, 2021, and a record review conducted on and around July 9, 2021, an investigator documented that Respondents failed to properly maintain an OSSF, resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state. Specifically, the conventional septic system was not properly maintained to prevent the discharge of sewage, and there was a sewage odor noted on the property where the sewage was discharging.
3. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sixto Delafuente and Martiza Delafuente” (the “EDPRP”) in the TCEQ Chief Clerk’s office on January 20, 2023.
4. The EDPRP was mailed to Respondents’ last known address on January 20, 2023, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.”
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk’s office on February 6, 2023.
6. By letter dated February 6, 2023, sent to Respondents’ last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the EDPRP.

¹ The Site’s real property is listed in Brazoria County Appraisal District’s records under Property ID No. 819383.

7. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, Respondents failed to properly maintain an OSSF, resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), TEX. HEALTH & SAFETY CODE § 366.017(b), and 30 TEX. ADMIN. CODE § 285.70(a).
3. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of one thousand three hundred twelve dollars (\$1,312.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondents are assessed an administrative penalty in the amount of one thousand three hundred twelve dollars (\$1,312.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondents' compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Sixto Delafuente and Martiza Delafuente; Docket No. 2021-0939-OSS-E" to:

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

3. Respondents shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Order, cease the unauthorized discharge of wastewater.
 - b. Within 15 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 3.a., in accordance with Ordering Provision No. 3.h.
 - c. Within 30 days after the effective date of this Order, properly clean and disinfect the affected area.
 - d. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 3.c., in accordance with Ordering Provision No. 3.h.
 - e. Within 60 days after the effective date of this Order, conduct an evaluation of the OSSF to determine the cause of the unauthorized discharge of untreated wastewater and necessary corrective actions designed to prevent or minimize it.
 - f. Within 90 days after the effective date of this Order, complete any corrective actions identified in the performance of Ordering Provision No. 3.e.
 - g. Within 115 days after the effective date of this Order, submit written certification of compliance with Ordering Provisions Nos. 3.e. and 3.f., in accordance with Ordering Provision No. 3.h.
 - h. The written certifications of compliance required by these Ordering Provisions shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certifications shall be signed by Respondents 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 based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- Respondents shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452
4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and

substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.

7. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
9. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF CYNTHIA K. SIROIS

“On behalf of the Executive Director of the Texas Commission on Environmental Quality, the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sixto Delafuente and Martiza Delafuente’ (the “EDPRP”) was filed in the TCEQ Chief Clerk’s office on January 20, 2023.

The EDPRP was mailed to Respondents’ last known address on January 20, 2023, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.”

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk’s office on February 6, 2023.

The EDPRP was mailed to Respondents’ last known address on February 6, 2023, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondents received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since each Respondent received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.”

"My name is Cynthia K. Sirois, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,
State of Texas,
on the 21st day of March, 2023

A handwritten signature in cursive script that reads "Cynthia K. Sirois".

Declarant