

From: [Susan Jablonski](#)
To: [Helen Gilbert](#)
Cc: [OCE](#); [Ramiro Garcia](#); ; [Steven Greenberg](#); [Mia Natalino](#); [Randall Wilburn](#); [Michael Ingersoll](#); [Susan Roberts](#); [Joel Anderson](#); [Lynn Bumguardner](#); [Michelle Harris](#); [Rosalind Stockton](#)
Subject: RE: Enforcement Discretion Response for Forest Glen Utility Company
Date: Thursday, October 1, 2020 6:14:48 PM
Attachments: [Enforcement Discretion Request without att. 9-23-20.pdf](#)

Ms. Helen S. Gilbert
Gilbert Wilburn, PLLC
7000 N MoPac Expressway, Suite 200
Austin, TX 78731

Subject: Request for Enforcement Discretion for violations documented at Forest Glen Utility Company; RN106339385, TPDES Permit No.: WQ0015030001

Dear Ms. Gilbert:

This is in response to your request dated September 23, 2020, regarding a waiver of enforcement for the violations documented in the July 30, 2020 Notice of Violation (NOV) to Forest Glen Utility Company. The Texas Commission on Environmental Quality (TCEQ) is exercising enforcement discretion on a case-by-case basis for regulated entities that are experiencing impacts due to the COVID-19 pandemic.

Your waiver request advised that the utility has experienced greater than normal flow rates and higher amounts of fats, oils and grease (FOG) being discharged by residents staying home due to the pandemic. Your waiver request also advises that this increase in usage of the system and the excessive discharge of FOG has led to both non-compliance with Type 1 reclaimed water and Total Suspended Solids (TSS) limits as well as operational problems with the aeration basins.

Failure to properly operate and maintain the facility, specifically the aeration basins having organic and filamentous material on the weirs, had been a previously documented problem and the subject of a repeat violation during the February 5, 2020, comprehensive compliance investigation (CCI) along with other operational concerns. The response to the NOV included the requested MER reports. These reports provided to the TCEQ indicate that the utility has exceeded the Nephelometric Turbidity Unit water quality limit during months prior to COVID (July through October 2019, December 2019, and January 2020); signifying non-compliance prior to the COVID-19 pandemic.

At this time, the request for enforcement discretion is being denied. The TCEQ appreciates the submitted corrective action in response to the July 30, 2020 NOV. Additional reporting will be required to ensure that the utility is meeting requirements of the Type I authorization, or documentation must be provided indicating that the reuse water is not being transferred for Type I use until requirements are met.

If you or members of Forest Glen Utility staff have any questions, or if you have any additional information you wish the TCEQ to consider, please feel free to contact Ms. Lynn Bumguardner, TCEQ Region 13 Water Section Manager in San Antonio, at (210) 403-4050.

Sincerely,

Susan Jablonski, P.E.
Area Director for Central Texas
Texas Commission on Environmental Quality

From: Ramiro Garcia <ramiro.garcia@tceq.texas.gov>
Sent: Wednesday, September 23, 2020 12:54 PM
To: Helen Gilbert <[REDACTED]> OCE <OCE@tceq.texas.gov>
Cc: Steven Greenberg <[REDACTED]> Mia Natalino <[REDACTED]> Randall Wilburn <[REDACTED]> Michael Ingersoll <[REDACTED]> Susan Roberts <Susan.Roberts@Tceq.Texas.Gov>; Joy Thurston-Cook <joy.thurston-cook@tceq.texas.gov>; Susan Jablonski <susan.jablonski@tceq.texas.gov>; Michelle Harris <michelle.harris@tceq.texas.gov>; Craig Pritzlaff <Craig.Pritzlaff@tceq.texas.gov>; Susan Johnson <susan.johnson@tceq.texas.gov>; Tracy Miller <tracy.miller@tceq.texas.gov>
Subject: RE: Forest Glen Utility Company Request for Enforcement Discretion

Good afternoon Ms. Gilbert,

I hope you and your family are well. This email confirms receipt of your correspondence. We are reviewing your request and expect to have a response soon.

Best regards,

Ramiro Garcia, Jr.
Deputy Executive Director
TCEQ

From: Helen Gilbert <[REDACTED]>
Sent: Wednesday, September 23, 2020 11:52 AM
To: OCE <OCE@tceq.texas.gov>; Ramiro Garcia <ramiro.garcia@tceq.texas.gov>
Cc: Steven Greenberg <[REDACTED]> Mia Natalino <[REDACTED]> Randall Wilburn <[REDACTED]> Michael Ingersoll <[REDACTED]> Susan Roberts <Susan.Roberts@Tceq.Texas.Gov>; Joy Thurston-Cook <joy.thurston-cook@tceq.texas.gov>
Subject: Re: Forest Glen Utility Company Request for Enforcement Discretion

Mr. Garcia and OCE:

Attached please find Forest Glen Utility Company's request for enforcement discretion due to COVID-19 without attachment. It appears that my previous attempt to email bounced back because of the size of the file (which included the much larger 7/30/20 NOV reply previously provided to Ms. Cook and Ms. Roberts).

If you have any questions, would like the NOV reply sent separately in parts, or need additional information, please do not hesitate to contact me.

Thanks,

Helen



Helen S. Gilbert

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September 23, 2020

Via Electronic Mail Only

Office of Compliance & Enforcement – MC 172
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Forest Glen Utility Company; RN106339385; TPDES Permit No. WQ001503001

Dear Office of Compliance & Enforcement Staff:

Our firm represents Forest Glen Utility Company (“Forest Glen”) a utility in Medina County providing sewer service to approximately 407 residents in Potranco Ranch Subdivision under CCN No. 21070. Forest Glen also provides non-potable reclaimed water for irrigation purposes only under a chapter 210 authorization. TCEQ’s San Antonio Region inspected the facility on or around June 18, 2020 which led to the issuance of a Notice of Violation (“NOV”) on July 30, 2020. Forest Glen responded to the initial exit interview and NOV on June 24 and August 28, 2020 respectively, providing information on preventative and corrective actions taken to address the reclaimed water operation, TSS excursions and operation of the aeration basin as well as additional areas of concern.

In its response to the NOV (attached), Forest Glen specifically requested that the Executive Director exercise his enforcement discretion to resolve the outstanding alleged violations.¹ At the time of inspection and follow-up, Forest Glen was unaware of Commission policy that such requests should have been made prospectively (earlier in the Spring) and until this firm became involved. Based on the nature of the alleged violations which were triggered by customer overuse/misuse of the system, however, Forest Glen could not have anticipated these challenges and thus a prospective request would have been infeasible. Nevertheless, Forest Glen is not requesting the relaxation of any monitoring or reporting requirements and repeats its request for enforcement discretion here.

The exercise of enforcement or prosecutorial discretion is justified and appropriate in this case because each of the alleged violations is directly related to problems caused by the COVID-19 lockdown. With nearly 24/7 resident use from late February through at least the summer, the sewer system (and reclaimed water operation which further treats effluent from the WWTP) have

¹ While Forest Glen did not specifically request enforcement discretion in its earlier response of June 24, 2020, it described events caused by Potranco Ranch residents which led to problems later identified by TCEQ in its NOV.

encountered challenges Forest Glen could not have reasonably anticipated from the worldwide pandemic. Residents have not only used the system more than ever before, but they have misused it by flushing an excessive amount of fats, oils and greases (“FOG”) and other items explicitly prohibited in the utility’s service agreement. This led to both non-compliance with Type 1 reclaimed water and TSS limits as well as operational problems with the aeration basin.² For example, the alleged violations of Type 1 water quality standards for reclaimed water relates directly to nutrient overload leading to BOD violations as a result of flushing of prohibited materials. Similarly, the TSS issue stems directly from the excess of FOG and prohibited solids flushed by Potranco Ranch residents. Such flushing also led to the presence of floating organics and filamentous material on weirs in the aeration basin.

The COVID-19 overuse and misuse also happened during a time when Forest Glen had (previously) planned to add another treatment unit to the WWTP. That is, problems were actually exacerbated while waiting for the new treatment unit to come online.³

As stated previously, Forest Glen is committed to protecting the human health of its customers and the environment and operating the site in compliance with TCEQ rules. The utility has expended tens of thousands of dollars and many man hours just since this Spring’s inspections to improve operational problems caused by the COVID-19 lockdown. The near constant customer use and frequent misuse have led to circumstances that were outside Forest Glen’s control and should be excused as an exercise of the Executive Director’s prosecutorial discretion.

If you have any questions or require additional information, please feel free to contact me.

Sincerely,



Helen S. Gilbert
Attorney for Forest Glen Utility Company

Enclosure

cc: Mr. Ramiro Garcia
Ms. Susan Roberts
Mr. Steven Greenberg

² As spelled out in more detail in its response to the NOV, among other actions, Forest Glen undertook repeated purging of lines, use of Edwards Aquifer water, the change of media material to help biological material to better settle and not interfere with effluent flow, and use of deodorants.

³ TCEQ conditionally approved plans and specifications for the third treatment unit on July 17, 2020, construction will commence on September 28, 2020, and the unit will go into operation by the beginning of 2021. Forest Glen will also be adding two (2) additional storage tanks next week and submitted an application for minor amendment to its TPDES permit on August 12, 2020.