

**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF WILLOW PARK
RN101920585**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-0836-MWD-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Willow Park ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located at 30 Crown Road, on the southwest corner of Clear Fork Trinity River crossing of Crown Road, approximately 3,000 feet east of Willow Springs Road, in Willow Park, Parker County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review conducted on April 8, 2013, TCEQ staff documented the following from self-reported discharge monitoring reports ("DMRs"):

Effluent Violation Table					
Permitted Effluent Limits	Monitoring Period				
	June 2012	October 2012	November 2012	December 2012	January 2013
CBOD ₅ Daily Average Concentration (Limit = 10 mg/L)	10.4	c	10.18	26.5	11.63
CBOD ₅ Single Grab Concentration (Limit = 35 mg/L)	c	c	c	37	c
Ammonia Nitrogen Daily Average Concentration (Limit = 3 mg/L)	c	4.45	3.84	9.3	9.19
Ammonia Nitrogen Single Grab Concentration (Limit = 15 mg/L)	c	c	c	23	16
TSS Daily Average Concentration (Limit = 15 mg/L)	c	c	c	26.25	16.18

Table abbreviations: CBOD₅ = five-day carbonaceous biochemical oxygen demand; TSS = total suspended solids; mg/L = milligrams per liter; c = compliant.

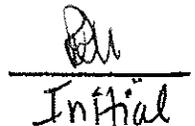
4. During a record review conducted on April 8, 2013, TCEQ staff documented that the annual sludge report for the monitoring period ending July 31, 2012 was not submitted by September 30, 2012.
5. During an investigation conducted on February 5, 2013, TCEQ staff observed an excessive amount of sludge and surface scum in the chlorine contact basin.
6. During an investigation conducted on February 5, 2013, TCEQ staff documented that on October 4, 2012, the Respondent reported that an unknown amount of untreated waste

was discharged from a force main into Squaw Creek near the western edge of Squaw Creek Downs Race Track.

7. During an investigation conducted on February 5, 2013, TCEQ staff observed evidence of an unauthorized discharge of untreated wastewater on the road around a manhole near the Beaver Creek lift station.
8. During an investigation conducted on February 5, 2013, TCEQ staff observed that the unauthorized discharge from a manhole near the Beaver Creek lift station that was discovered on February 5, 2013 was not reported until May 20, 2013. RDH
Initial
9. During an investigation conducted on February 5, 2013, TCEQ staff observed that the laboratory reports of effluent data indicated that fecal coliform tests were being conducted rather than *Escherichia coli* ("*E. coli*") tests for the October 2012, November 2012, December 2012, and January 2013 monitoring periods.
10. During an investigation conducted on February 5, 2013, TCEQ staff observed that the Respondent did not submit the noncompliance notification for the total suspended solids daily average exceedance for the monitoring period of May 2011. RDH
Initial
11. The Respondent received notices of the violations on May 1, 2013 and on May 13, 2013.
12. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By October 5, 2012, mitigated the discharge during repairs, fixed the force main, and conducted an environmental assessment of the impact on Squaw Creek.
 - b. By February 6, 2013, cleaned up debris around the manhole where the discharge occurred near the Beaver Creek lift station.
 - c. By February 8, 2013, began requesting the lab to test for *E. coli* instead of fecal coliforms.
 - d. By May 2, 2013, submitted the annual sludge report and updated operational guidance and procedures to ensure that future reports are submitted as required.
 - e. By May 20, 2013:
 - i. Submitted noncompliance notifications for the 40% exceedance of total suspended solids in May 2011 and for the unauthorized discharge discovered February 5, 2013;
 - ii. Revised previously submitted DMRs for the Facility to indicate that data previously reported as *E. coli* was for fecal coliforms; and

- iii. Updated standard operating procedures at the Facility to ensure all future reports are submitted as required.

II. CONCLUSIONS OF LAW


Initial

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013834001, Effluent Limitations and Monitoring Requirements No. 1.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to timely submit the annual sludge report for the monitoring period ending July 31, 2012, by September 30, 2012, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (17) and TPDES Permit No. WQ0013834001, Sludge Provisions.
4. As evidenced by Findings of Fact No. 5, the Respondent failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0013834001, Operational Requirements No. 1.
5. As evidenced by Findings of Fact Nos. 6 and 7, the Respondent failed to prevent an unauthorized discharge into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0013834001, Permit Conditions No. 2.g.
6. As evidenced by Findings of Fact No. 8, the Respondent failed to notify the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance, in violation of 30 TEX. ADMIN. CODE § 305.125(9) and TPDES Permit No. WQ0013834001, Monitoring and Reporting Requirements No. 7.a.
7. As evidenced by Findings of Fact No. 9, the Respondent failed to monitor *E. coli* in the effluent as specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.4, and TPDES Permit No. WQ0013834001, Effluent Limitations and Monitoring Requirements No. 1.
8. As evidenced by Findings of Fact No. 10, the Respondent failed to submit a noncompliance notification for any effluent violation which deviates from the permitted effluent limitation by greater than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0013834001, Monitoring and Reporting Requirements No. 7.c.

9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of Forty-Four Thousand Thirty-Eight Dollars (\$44,038) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid One Thousand Two Hundred Thirty-Three Dollars (\$1,233) of the administrative penalty. The remaining amount of Forty-Two Thousand Eight Hundred Five Dollars (\$42,805) of the administrative penalty shall be payable in 35 monthly payments of One Thousand Two Hundred Twenty-Three Dollars (\$1,223) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Forty-Four Thousand Thirty-Eight Dollars (\$44,038) as set forth in Section II, Paragraph 10 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Willow Park, Docket No. 2013-0836-MWD-E" to:

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

2. The Respondent shall undertake the following technical requirements:

- a. Within 90 days after the effective date of this Agreed Order, develop and implement a solids management plan ("SMP"). The SMP shall outline a program of internal process control testing to monitor the efficiency of the wastewater treatment plant and to maintain the proper solids balance within the system. The plan shall include the following items:
 - i. A schedule for performing the following process control analyses and recommended ranges to be maintained: mixed liquor thirty-minute sludge settleability, mixed liquor suspended solids, mixed liquor dissolved oxygen concentration, clarifier sludge blanket depth, and residual chlorine concentration;
 - ii. Procedures outlining actions to be taken in the event that any of the above process control analyses fall outside the recommended range; and
 - iii. Specific sampling locations for the above stated process control measurements.

Organized, written records of the process control analyses shall be maintained for a period of three years at the Facility and shall be made available to TCEQ representatives upon request;

- b. Within 105 days, after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, as described in Ordering Provision No. 2.d below;
- c. Within 150 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations and requirements of TPDES Permit No. WQ0013834001, 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 and requirements, as described in Ordering Provision No. 2.d below; and
- d. The certifications required by Ordering Provision Nos. 2.b and 2.c shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations and requirements. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date

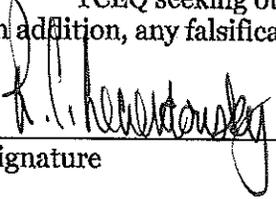
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Willow Park. I am authorized to agree to the attached Agreed Order on behalf of the City of Willow Park, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Willow Park waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

11-21-2013

Date

Richard Nevedowsky

Name (Printed or typed)
Authorized Representative of
City of Willow Park

Mayor

Title

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