

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 3, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 91 7108 2133 3934 5800 9125

The Honorable James Stewart
Mayor of Brady
P.O. Box 351
Brady, Texas 76825-0351

Re: Proposed Agreed Order
City of Brady
RN104191200
Docket No. 2009-0546-MLM-E; Enforcement Case No. 37478
FOR SETTLEMENT PURPOSES ONLY

Received
07/09/2009
San Angelo Region
TCEQ

FILE COPY

Dear Mayor Stewart:

In the cover letter for the proposed agreed order mailed out to the City of Brady on May 28, 2009, the City of Brady was given an opportunity to propose a Supplemental Environmental Project (SEP) to offset a portion of the assessed penalty. Your proposal for an SEP has been reviewed and has been incorporated in the enclosed revised proposed agreed order. Please note that agreed orders are subject to final approval by the Commission and the SEP must not be implemented until the Commission has approved the agreed order.

If you agree with the order as proposed, please sign and return this order with an original signature to:

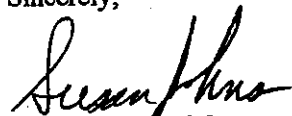
Ms. Merrilee Hupp
Enforcement Division, MC 169
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

You will be notified when your order will go before the Commission for approval. A copy of the revised order is provided for your files. Also enclosed for your convenience is a return envelope. **If the signed order is not facsimiled to 512-239-2550 or mailed and postmarked by July 27, 2009, we will assume that you have elected to participate in the more extended enforcement process described in previous correspondence, and we will proceed accordingly. Your case will be forwarded to the Litigation Division and this settlement offer, and possibly the SEP, will no longer be available.**

The Honorable James Stewart
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If you have any questions regarding these matters, please contact Ms. Merrilee Hupp of my staff at 512-239-4490.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Johnson".

Susan Johnson, Manager
Enforcement Division
Texas Commission on Environmental Quality

SJ/mgh

Enclosures: Revised Proposed Agreed Order, File Copy, Return Envelope

cc: Mr. Mark Newman, Manager, Water Section, San Angelo Regional Office, TCEQ
Ms. Christine Taylor, Investigator, Public Drinking Water Section, Water Supply Division,
MC 155

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF BRADY
RN101387231; RN104191200

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

AGREED ORDER DOCKET NO. 2009-0546-MLM-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 City of Brady ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City 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 City 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 City. ♦

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

I. FINDINGS OF FACT

1. The City owns and operates a public water supply located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of Brady in McCulloch County, Texas ("Facility 1") that has approximately 3,160 retail service connections and 454 wholesale service connections and serves at least 25 people per day for at least 60 days per year.

2. The City owns and operates a water treatment plant with an evaporation pond used to store water treatment wastewater located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of Brady in McCulloch County, Texas (the "Facility 2").
3. The City has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
4. During an investigation conducted on February 3, 2009, TCEQ San Angelo Regional staff documented an unauthorized discharge of backwash wastewater at Facility 2. Specifically, a hole had been cut through the embankment of the water treatment plant backwash pond, allowing approximately 450,000 gallons of water treatment wastewater to flow across a pasture, into a borrow ditch, and then into a concrete culvert located beneath Ranch Road 3022 and into an unnamed draw that feeds Brady Creek Reservoir (Brady Lake). Samples collected during the investigation revealed concentrations of chloride, total dissolved solids, and sulfate about twice the levels historically measured in Brady Lake between October 2005 and June 2008.
5. During an investigation conducted on February 3, 2009, TCEQ San Angelo Regional staff documented that no notice had been provided to the local government officials and local media regarding the unauthorized discharge of 450,000 gallons of backwash wastewater which occurred at approximately 11:30 a.m. on February 3, 2009 at Facility 2. The facsimile was not sent by the City until February 5, 2009, 1:51 p.m. to the local newspaper.
6. During a record review on April 20, 2009, TCEQ staff documented that the City did not comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") at Facility 1, based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.152 mg/L for the third quarter of 2008, 0.162 for the fourth quarter of 2008, and 0.150 mg/L for the first quarter of 2009.
7. The City received notices of the violations on April 4, 2009 and April 24, 2009.
8. The Executive Director recognizes that by February 4, 2009, the City began backfilling the excavated cut in the embankment wall and rerouted the backwash wastewater with the addition of 110 feet of 2-inch pipe, a meter, and a tap to stop the unauthorized discharge from the backwash pond and prevent future overflows from the backwash pond. ♦

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Findings of Fact No. 4 the City failed to prevent an unauthorized discharge of water treatment wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(4) and (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004712000, Permit Conditions No. 2.g. and Operational Requirements No. 1.

3. As evidenced by Findings of Fact No. 5, the City failed to notify appropriate local government officials and the local media as quickly as possible, but not later than 24 hours after becoming aware of an unauthorized discharge of 100,000 gallons or more from the Facility, in violation of 30 TEX. ADMIN. CODE § 319.302(b)(3) and (c)
4. As evidenced by Findings of Fact No. 6, the City failed to comply with the MCL of 0.080 mg/L for TTHM, based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City 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.
6. An administrative penalty in the amount of Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b) and TEX. WATER CODE § 7.053. Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP")."

III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) as set forth in Section II, Paragraph 6, 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 Brady, Docket No. 2009-0546-MLM-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. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 6 above, Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that reporting requirements for unauthorized discharges are properly accomplished, in accordance with 30 TEX. ADMIN. CODE § 319.302;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

- c. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
- d. Within 380 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.c. as described in Ordering Provision 3.b. above to the following addresses:

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

with a copy to:

DBP Compliance Coordinator
Water Supply Division, PDWS, MC 155
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3287

- 4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.
- 5. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 6. 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 7. 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 City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
- 8. 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.

9. This Agreed Order, issued by the Commission, shall not be admissible against the City 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.
10. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
11. 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.