

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF CORPUS CHRISTI
RN101610327

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2021-0986-MWD-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Corpus Christi (the "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 Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including 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 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 agreement of the parties. 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. The duties and responsibilities imposed by this 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 water reclamation facility located at 601 Nile Drive in Corpus Christi, Nueces County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation at the Facility conducted from April 2, 2021 through April 21, 2021, an investigator documented that:
 - a. In the West Train, Clarifier No. 1 was offline, and the skimmer arms were removed from Clarifier Nos. 3 and 4. In the East Train, Clarifier Nos. 5 and 7 were offline, and the skimmer arm was removed from Clarifier No. 8.
 - b. The Respondent was not maintaining an appropriate quantity and quality of solids inventory to properly operate the Facility. Excessive foam was noted on the aeration and reaeration basins. Additionally, excess scum, foam, and sludge were observed in both the east and west clarifier trains (East Clarifier Nos. 6 and 8; and West Clarifier Nos. 2, 3, and 4). An excess of settleable solids, a low food-to-microorganism ratio, high ammonia nitrogen levels, and low dissolved oxygen ("DO") levels were noted.

- c. The screening and grit storage containers at the four chlorine contact chambers were not covered.
 - d. Screenings, foam, and grease balls were discharged in other than trace amounts from the outfall into Blind Oso Bay. Additionally, sludge and bloodworms were observed around the outfall. Also, a fish kill of approximately 30 fish was observed.
 - e. Upset conditions at the Facility caused partially treated wastewater and sludge to discharge into Blind Oso Bay on April 2, 2021, and the TCEQ Region 14 Office and Enforcement Division were not notified.
3. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
- a. By July 28, 2021, removed the chlorine contact chamber screening storage containers;
 - b. By July 29, 2021, repaired East Clarifier No. 5 and brought it back online;
 - c. By September 29, 2021, replaced the mechanical skimmer arms on the West Clarifier Nos. 3 and 4, with the TCEQ approved spray bar systems and brought them back online;
 - d. By January 26, 2024, removed excess scum, foam, and sludge from the East and West Clarifier Trains (East Clarifier Nos. 6 and 8; and West Clarifier Nos. 2 and 3);
 - e. By January 30, 2024, ceased the discharge of floating solids and sludge from the outfall;
 - f. By February 5, 2024, developed and implemented procedures and conduct employee training to report any noncompliance which may endanger human health or safety, or the environment to the Regional Office within 24 hours of becoming aware, and in writing to the TCEQ Region 14 Office and Enforcement Division within five working days of becoming aware of the noncompliance;
 - g. By February 6, 2024, developed and implemented procedures and conduct employee training to keep the areas in and around Blind Oso Bay clean;
 - h. By February 17, 2024, repaired East Clarifier No. 7 and brought it back online; and
 - i. By February 22, 2024, replaced the mechanical skimmer arms on the East Clarifier No. 8 and brought it back online.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondent failed to ensure the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010401004, Operational Requirements No. 1.
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to ensure the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and TPDES Permit No. WQ0010401004, Operational Requirements No. 1.
4. As evidenced by Finding of Fact No. 2.c, the Respondent failed to ensure the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and TPDES Permit No. WQ0010401004, Operational Requirements No. 1.
5. As evidenced by Finding of Fact No. 2.d, the Respondent failed to take all reasonable steps to minimize or prevent any sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (4) and 307.4(b)(2), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0010401004, Permit Conditions Nos. 2.d and 2.g and Interim I Effluent Limitations and Monitoring Requirements No. 4.
6. As evidenced by Finding of Fact No. 2.e, the Respondent failed to report any noncompliance which may endanger human health or safety, or the environment orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and 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. WQ0010401004, Monitoring and Reporting Requirements No. 7.a.
7. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of \$236,955 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, \$236,955 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A" - incorporated herein by reference). The Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and

satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 8 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's 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 that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Corpus Christi, Docket No. 2021-0986-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 implement and complete the SEP as set forth in Conclusion of Law No. 8. The amount of \$236,955 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order submit notification to the TCEQ Region 14 Office and Enforcement Division in writing for the noncompliance which may endanger human health or safety, or the environment which started on April 2, 2021, in accordance with TPDES Permit No. WQ0010401004, Monitoring and Reporting Requirements No. 7.a.
 - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.g.
 - c. Within 60 days after the effective date of this Order:
 - i. Begin the replacement of West Clarifier No. 1. Provide quarterly progress reports to the addresses listed in Ordering Provision No. 3.g;
 - ii. Remove excess scum, foam, and sludge from West Clarifier No. 4; and

- iii. Develop a solids management plan. Address operational targets and procedures for solids management throughout each unit.
- d. Within 75 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.c.ii, in accordance with Ordering Provision No. 3.g.
- e. Within 80 days after the effective date of this Order, implement the solids management plan procedures, and conduct employee training on the plan, drafted in accordance with Ordering Provision No. 3.c.iii.
- f. Within 360 days after the effective date of this Order:
 - i. Submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.e, in accordance with Ordering Provision No. 3.g; and
 - ii. Bring new West Clarifier No. 1 online and ensure proper operational status.
- g. Within 375 days after the effective date of the Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.f.ii. The certification shall be signed by the Respondent 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
500 North Shoreline Boulevard, Suite 500
Corpus Christi, Texas 78401-0318

4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
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 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
8. 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.
9. This 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 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 Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

For the Executive Director

Date

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

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

Date

Name (Printed or typed)
Authorized Representative of
City of Corpus Christi

Title

☐ *If mailing address has changed, please check this box and provide the new address below:*

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

Attachment A
Docket Number: 2021-0986-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Corpus Christi
Penalty Amount:	\$236,955
SEP Offset Amount:	\$236,955
Type of SEP:	Compliance
Project Name:	<i>Scum and Slotted Skimmer Improvements</i>
Location of SEP:	Nueces County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order in exchange for Respondent's performance of a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

Respondent is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility (the "Facility"), which are described in this Agreed Order. This Agreed Order cites violations at Respondent's Facility.

1. Project Description

A. Project

Respondent shall hire a contractor to purchase and install six skimmer pipes for secondary clarifiers at the Oso Water Reclamation Plant. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment for six stainless steel slotted skimmer pipes (the "Project"). Respondent shall solicit bids from qualified contractors to perform the Project. Any advertisement, including publication, related to the SEP must include the enforcement statement as stated below in Section 6, Publicity. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations, including permits that may be required prior to commencement of the SEP. The Commission's approval and issuance of this Agreed Order shall not itself be construed to authorize any activity for which Respondent is required by statute or rule to obtain authorization from the Commission.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed below in Subsection C. Minimum Expenditure, Estimated Cost Schedule. No portion of the SEP Offset Amount shall be spent on administrative costs, including operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent's signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by enabling better treatment of wastewater, and preventing inadequately treated wastewater discharges being released into the environment. Inadequately treated wastewater discharges can carry bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

Additional risks include occurrences of low dissolved oxygen, fish kills, algal bloom, and bacterial contamination in waterways.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project described above in Section 1.A., and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project. Costs in excess of the SEP Offset Amount shall not be grounds to relieve Respondent of its obligations to perform this SEP.

Estimated Cost Schedule

Item	Cost	Quantity	Total
Pipe Skimmers	\$40,600	6	\$243,600
Total			\$243,600

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 360 days after the effective date of this Agreed Order.

Executive Director ("ED") staff may grant an extension to any deadline for Respondent's performance of the SEP described herein, upon a written and substantiated showing of good cause. All requests for extensions must be made by Respondent and shall be made in writing to ED staff. Extensions are not effective until Respondent receives written approval from ED staff. The determination of what constitutes good cause rests solely with ED staff. Extension requests shall be sent to the SEP Coordinator by first class mail and electronic mail, at:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
Email: sepreports@tceq.texas.gov

3. Records and Reporting

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to TCEQ describing actions performed to date to implement the Project. Within 90 days after the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 360-day timeframe set forth above in Section 2, Performance Schedule. Thereafter, Respondent shall submit progress reports to TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth below in the Reporting Schedule table:

Reporting Schedule

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project

90	Actions completed during previous 60-day period
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
360	Notice of SEP completion

B. Final Report

Within 365 days after the effective date of the Agreed Order, or within 30 days after completion of the SEP, whichever is earlier, Respondent shall submit a Final Report to TCEQ, which shall include the following:

1. An itemized list of expenditures and total cost of the Project;
2. Copies of invoices or receipts corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
4. Copies of proof of advertisement of invitation for bids, if applicable;
5. A certified statement of SEP completion and document authentication;
6. A detailed map showing the specific location of the Project site(s);
7. Copies of all engineering plans related to work performed pursuant to the Project, if applicable;
8. Dated photographs of the purchased materials and supplies; before and after work being performed during the Project; and of the completed Project; and
9. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

C. Submittals

Respondent shall submit all SEP reports and any additional information as requested to the SEP Coordinator at the address provided above.

4. Additional Information and Access

Respondent shall provide additional information as requested by TCEQ staff and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described above in Sections 2 through 4, the ED may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make

the check payable to "Texas Commission on Environmental Quality," and shall mail it to the SEP Coordinator at the address provided above.

6. Publicity

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by TCEQ**. Such statements include advertising, public relations, and press releases.

7. Recognition

Respondent may not seek recognition for this project in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with TCEQ or any other agency of the state or federal government.