

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 5, 2008

CERTIFIED MAIL

The Honorable Chuck Roper, Mayor
City of Lorena
114 East Center Street
Lorena, Texas 76655-9651

RE: City of Lorena
TCEQ Docket No. 2005-0492-MWD-E; Permit No. 12195-001
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

cc: Michael Meyer, Enforcement Coordinator, TCEQ Enforcement Division (MC 128)
Sharon Blue, SEP Coordinator, TCEQ Litigation Division (MC 175)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on

LaDonna Castaneda FEB 05 2008

LaDonna Castaneda, Chief Clerk
Texas Commission on Environmental Quality

IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF LORENA
TEXAS POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT
NO. 12195-001
RN101917870

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2005-0492-MWD-E

I. JURISDICTION AND STIPULATIONS

At its JAN 30 2008 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 Lorena ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

The City owns and operates a domestic wastewater treatment facility located approximately 3,500 feet south of the intersection of Center Street and Front Street in Lorena, McLennan County, Texas (the "Facility").

- 2. The City has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.

- 4. The City received notice of the violations alleged in Section II ("Allegations") on or about January 26, 2005.
- 5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
- 6. An administrative penalty in the amount of Ten Thousand Eight Hundred Dollars (\$10,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

5005 20 833 Two Thousand One Hundred Sixty Dollars (\$2,160) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Eight Thousand Six Hundred Forty Dollars (\$8,640) shall be conditionally offset by the City's completion of a Supplemental Environmental Project.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has taken the following corrective measures at the Facility, as documented in a letter to the TCEQ Waco Regional Office dated December 14, 2004:
 - a. installed a wire mesh to capture screening debris which is then disposed of in a covered dumpster;
 - b. began performing manganese oxide correction for chlorine residual analysis;
 - c. purchased new standard pH buffers;
 - d. obtained a new Hach pH electrode with temperature probe and started recording the slope when utilizing the pH meter; and
 - e. installed a functional forced air ventilation system in the chlorination room.
10. 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 City has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to prevent the discharge and accumulation of solids in the receiving stream and to ensure that all systems of collection, treatment and disposal were properly operated and maintained, in violation of TPDES Permit No. 12195-001, Effluent Limitations and Monitoring Requirements No. 4 and Operational Requirements No. 1, TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE §§

305.125(1) and 305.125(5), as documented during an investigation conducted by the TCEQ Waco Regional Office on October 6, 2004. Sludge was noted in the receiving stream at the point of discharge and downstream. Analysis of samples collected from the receiving stream at the point of confluence with the discharge indicated high ammonia nitrogen, total Kjeldahl nitrogen, total phosphates and ortho-phosphates, indicating the presence of partially or untreated sewage. Analysis of samples collected upstream indicated low values for the above parameters. Specifically, the following operational problems were noted:

- a. bar screenings were not kept in a covered storage receptacle and screening debris was noted on the ground surrounding the receptacle;
 - b. excessive scum on the surface of both clarifiers;
 - c. the collection system experiences problems with inflow during periods of rainfall; and
 - d. an evaluation of the mixed liquor and solids inventory of the wastewater treatment plant indicated poor solids management within the plant.
2. Failed to comply with test procedures specified in the permit and Commission rules and failed to maintain records of monitoring activities, in violation of TPDES Permit No. 12195-001, Monitoring and Reporting Requirements No. 2 and 3(c)(vi), 30 TEX. ADMIN. CODE §§ 319.11(a) and 319.11(e) and 30 TEX. ADMIN. CODE § 305.125(1), as documented during an investigation conducted by the TCEQ Waco Regional Office on October 6, 2004. Specifically, the following issues were noted:
- a. manganese oxide correction factor was not being performed for chlorine analysis;
 - b. pH buffers had expired; and
 - c. calibration records for the dissolved oxygen meter did not include the barometric pressure or elevation noted during the calibration.
3. Failed to submit an annual sludge report to the TCEQ by September 1 of each year, in violation of TPDES Permit No. 12195-001, Section III. Requirements Applying to All Sewage Sludge Disposed In a Municipal Solid Waste Landfill, Paragraph G. Reporting Requirements and 30 TEX. ADMIN. CODE § 305.125(1) as documented during an investigation conducted on October 6, 2004. Specifically, the City failed to submit an annual sludge report for 2003 and 2004.
4. Failed to have a functional forced air ventilation system for the chlorination housing, in violation of 30 TEX. ADMIN. CODE § 317.6(b)(1)(E), as documented during an investigation conducted on October 6, 2004.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Lorena, Docket No. 2005-0492-MWD-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 Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Thousand Six Hundred Forty Dollars (\$8,640) is 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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit a copy of the annual sludge report for 2003 and 2004.
 - b. Within 30 days after the effective date of this Agreed Order, conduct an evaluation of the receiving stream to determine the extent of wastewater treatment plant solids, if any, deposited in the receiving stream and onto adjacent affected properties. If the evaluation determines that solids need to be removed, disposal of the removed sludge shall be carried out in accordance with all applicable rules of the TCEQ and in a manner that prevents contamination of surface or groundwater. The City shall maintain written records of the amount of sludge removed, the technique used, and the ultimate disposal site.
 - c. In the event that the receiving stream evaluation required in Ordering Provision No. 3.b. determines that no remediation is necessary, submit written certification as described in 3.k.

below, confirming that no remediation is required, to the TCEQ within 45 days after the effective date of this Agreed Order.

- d. In the event that the receiving stream evaluation required in Ordering Provision 3.b. determines that remediation is necessary, complete remediation of the receiving stream within 60 days after the effective date of this Agreed Order.
- e. Within 75 days after the effective date of this Agreed Order, submit written certification as described in 3.k. below, that solids have been removed from the receiving stream and disposed of in accordance with the requirements of Ordering Provision 3.b. and d.
- f. Within 90 days after the effective date of this Agreed Order, develop a solids management plan (SMP) for the wastewater treatment plant and submit a copy to the addresses listed in 3.k. below. 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 with the system. The SMP shall be prepared by a Texas registered professional engineer or a Class "A" TCEQ certified wastewater operator and shall include, at a minimum, the following items:
 - a schedule for performing the following process control tests and recommended ranges to be maintained: mixed liquor 30-minute sludge settleability (SV_{30}), mixed liquor suspended solids (MLSS), sludge volume index (SVI) sludge density index (SDI), mixed liquor dissolved oxygen concentration, and clarifier sludge blanket depth;
 - ii. recommended sampling location for the process control measurements;
 - iii. procedures outlining actions to be taken in the event that any of the above process control test results fall outside the recommended range;
 - iv. procedure for determining the appropriate solids removal rate and frequency; and
identification of the ultimate disposal site for the sludge, and a system for maintaining sludge disposal records in accordance with the requirements of the permit.
- g. Within 120 days after the effective date of this Agreed Order, the engineer or Class "A" operator shall review the SMP in the field with the City's wastewater treatment plant operator(s). Immediately following the field review, the City shall implement the SMP.
- h. Within 120 days after the effective date of this Agreed Order, develop and implement a plan and schedule for mitigating the effects of inflow/infiltration on the collection system. The plan and schedule shall be prepared by a Texas registered professional engineer and shall include, but not be limited to, obtaining funding for collection system rehabilitation, a schedule for upgrading the collection system, and an evaluation phase to determine the

effectiveness of the upgrades to the collection system. The plan and schedule shall be submitted to the addresses listed in 3.k. below.

- i. Within 130 days after the effective date of this Agreed Order, provide written certification as described in 3.k. below, that the requirements contained in Ordering Provision Nos. 3.g. and 3.h. have been implemented.
- j. Within 730 days after the effective date of this Agreed Order, complete construction and divert all wastewater to the new regional wastewater treatment plant and submit written certification within 750 days as described in 3.k. below.
- k. Submit documentation as required in Ordering Provision No. 3.a., f., and h., and written certification as described below, including photographs and or records to demonstrate compliance with Ordering Provision No. 3.c., e., i., and j.

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 fine and imprisonment for knowing violations."

The documentation required in Ordering Provision No. 3.a., f., and h. and the certification required in Ordering Provision No. 3.c., e., i., and j. shall be submitted to:

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

with a copy to:

Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue
Waco, Texas 76710-7826

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. 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.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



For the Commission

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.

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

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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



Signature

8-30-07


Date

Chuck Roper

Name (Printed or typed)
Authorized Representative of
City of Lorena

Mayor

Title



For the Executive Director

12/10/07

Date

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

Attachment A
Docket Number: 2005-0492-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Lorena
Penalty Amount:	Eight Thousand Six Hundred Forty Dollars (\$8,640)
SEP Offset Amount:	Eight Thousand Six Hundred Forty Dollars (\$8,640)
Type of SEP:	Custom (with a pre-approved concept)
Location of SEP:	McLennan County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform 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.

1. Project Description

A. Project

The Respondent shall partner with Keep McLennan County Beautiful to perform an electronics collection and recycling event in McLennan County. The Respondent shall ensure that the event:

- occurs on a weekend during daylight hours;
- offers to the public a convenient drop-off location; and
- is advertised in a newspaper of large circulation in the geographic area.

The Respondent shall participate with Keep McLennan County Beautiful to collect, transport, and recycle the collected electronic components. The SEP Offset related to this Order will be used for the direct cost of performance of the event and will not be used for administrative costs.

The Respondent shall ensure that its portion of this project shall be performed in accordance with all federal, state and local laws and regulations. The Respondent recognizes that additional funds over and above the SEP Offset Amount may be necessary to conduct the event. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The recycling portion of the event will include recycling of E-waste materials. E-waste materials include computers and related information technologies such as workstations, scanners, printers, hand-held diagnostic and screening tools, cell phones, servers, and televisions, among many others. Cathode ray tubes ("CRT") are the picture tubes in computers, monitors and TVs. With the rapid evolution of technology, computers and TVs containing CRTs become obsolete in a short period of time and are simply discarded, often in landfills. A typical 17-inch CRT contains approximately two pounds of lead and larger CRTs may contain up to ten pounds

of lead. E-waste can contain lead, mercury, cadmium, hexavalent chromium and brominated flame retardants.

This SEP will limit potentially toxic or hazardous e-waste from the waste stream destined for disposal or incineration and to divert the e-waste to environmentally sensitive recycling. This will save valuable landfill capacity and allow the recycler to re-utilize e-waste components, including CRTs.

This SEP will limit potentially toxic or hazardous wastes from being improperly disposed of in the environment by providing for the recycling of electronics such as televisions, computer, and cellular telephones, and will help rid the community of the dangers and health threats associated with non-regulated dumping or disposal of these materials in landfills.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of coordination of the event. The Respondent shall complete the event within one year of the effective date of this Agreed Order.

3. Reporting

Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;
2. The total amount of costs incurred by the Respondent;
3. A statement of quantifiable environmental benefits, such as number or pounds of electronics collected and recycled;
4. Photographs of the project before implementation and after completion; and
5. Any additional information the Respondent believes will demonstrate compliance with this agreement.

Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the TCEQ staff may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, with the payment, the Respondent shall include the docket number of this Agreed Order and a note that it is for reimbursement of an SEP. The payment for any amount due shall be made out to A Texas Commission on Environmental Quality@ and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

6. Publicity

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

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

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