

Zimbra

monica.salinas@co.hidalgo.tx.us

Fwd: FW: TCEQ Revised Order

From : Martin Ramirez <martin.ramirez@mail.hchd.org>
Subject : Fwd: FW: TCEQ Revised Order
To : salinas, monica <monica.salinas@co.hidalgo.tx.us>

Wed, Mar 06, 2019 11:40 AM

📎 2 attachments

Martin Ramirez, Environmental Health
Hidalgo Co. Health & Human Services
1304 S. 25th Ave.
Edinburg, TX 78542
(956) 383-0111 ext 7306
martin.ramirez@hchd.org

----- Original Message -----

From: "Caleb Olson" <Caleb.Olson@Tceq.Texas.Gov>
Sent: 3/6/2019 11:18:39 AM
To: "Martin Ramirez" <martin.ramirez@mail.hchd.org>
Subject: FW: TCEQ Revised Order

Good morning Mr. Ramirez,

Would you please give me an update on the status of obtaining an initial/signature from Judge Cortez? We are trying to get the Order scheduled to appear before our Commissioners' Agenda but without demonstrating the County recognizes and agrees with the revisions, we cannot move forward. Please call or email me with an update as soon as possible.

Thank you,

Caleb Olson
Enforcement Coordinator
Office of Compliance and Enforcement



Texas Commission on Environmental Quality
DFW Regional Office
2309 Gravel Drive, Fort Worth, Texas 76118-6951
Phone: (817) 588-5856

Fax : (817) 588-5705
Caleb.Olson@TCEQ.Texas.Gov

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From: Caleb Olson
Sent: Monday, February 11, 2019 11:04 AM
To: 'Martin Ramirez' <martin.ramirez@mail.hchd.org>
Subject: TCEQ Revised Order

Good morning Mr. Ramirez,

We spoke on Friday afternoon and I was hoping to send the revised Order to you then but I noticed a grammatical error had been made in the revisions so I had to wait for them to send me the corrected revised Order. Attached is the revised Order and the following changes were made:

- Page 2, "Allegations": A citation for "Tex. Water Code § 26.121" was added and "30 Tex. Admin. Code 281.24(a)(4)" was changed to "30 Tex. Admin. Code § 281.25(a)(4)."
- Page 3, "Ordering Provisions": In paragraph 3.b, "TPDES GP No. TXR04000" was changed to "TPDES GP No. TXR040000."

These changes do not affect the status of the violation, penalty amount, or SEP in any way. In order for us to show that the revisions have been reviewed and agreed upon, we need a re-signed or initialed copy of the revised Order. Because the original Order signer, Judge Garcia, is no longer with the county, I think it's best if you could have Judge Cortez re-sign the Order. Once Judge Cortez has signed the Order, you can email me a copy of the scanned Order. Because the changes were fairly minimal, we do not need you to mail in the signed Order.

I know that getting Judge Garcia to sign the Order the first time through was a timely process for you, but I would like to have a signed copy of the revised Order sent to me by the end of February 15, 2019. If you think you will need more time or if you have any questions, please get in touch with me.

Thank you,

Caleb Olson
Enforcement Coordinator
Office of Compliance and Enforcement




Texas Commission on Environmental Quality
DFW Regional Office
2309 Gravel Drive, Fort Worth, Texas 76118-6951
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 **Revised Order.pdf**
185 KB

**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HIDALGO COUNTY
RN106035801**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2017-1771-WQ-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Hidalgo County (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 together stipulate that:

1. The Respondent owns and operates a small Municipal Separate Storm Sewer System ("MS4") located within the limits of Hidalgo County in Edinburg, Hidalgo County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$18,750 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The amount of \$3,750 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms and conditions contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

Pursuant to TEX. WATER CODE § 7.067, \$15,000 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of two Supplemental Environmental Projects ("SEP") as defined in the attached SEP Agreements ("Attachments A and B", 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 Agreements, as determined by the Executive Director.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.
6. 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 or conditions in this Order.
7. 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.
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.

II. ALLEGATIONS

During an investigation conducted on November 15, 2017, an investigator documented that the Respondent failed to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System ("TPDES") General Permit ("GP") for Small MS4s, in violation of TEX. WATER CODE § 26.121, 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A). Specifically, TPDES GP No. TXR040408 expired on August 13, 2012 and a Notice of Intent ("NOI") and revised Stormwater Management Program ("SWMP") were not submitted by the application deadline of June 11, 2014.

III. DENIALS

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

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this 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. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hidalgo County, Docket No. 2017-1771-WQ-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 SEPs as set forth in Section I, Paragraph 4. The amount of \$15,000 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEPs pursuant to the terms of the SEP Agreements, as defined in Attachments A and B. Penalty payments for any portion of the SEPs 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. Immediately upon the effective date of this Order, until such time that authorization to discharge stormwater is obtained, or until 180 days after the effective date of this Order, whichever is earlier, comply with the permit requirements in expired TPDES GP No. TXR040408.
 - b. Within 30 days after the effective date of this Order, submit an NOI through the State of Texas Environmental Electronic Reporting System and a revised SWMP for TPDES GP No. TXR040000 to:

Applications Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing.
- d. Within 180 days after the effective date of this Order, submit written certification that authorization to discharge stormwater has been obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.b. 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:

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
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

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 Site operations referenced in this Order.
6. If the Respondent fails to comply with any of the Ordering Provisions in this 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 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.
7. 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 Order Compliance Team at the address listed above.
8. 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.
9. 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.

10. 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

Richard F. Cortez

Name (Printed or typed)
Authorized Representative of
Hidalgo County

3/12/19

Date

County Judge

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.

