

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF HAWK COVE
RN104265848

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2021-0024-MWD-E

I. JURISDICTION AND STIPULATIONS

On NOV 29 2023, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Hawk Cove (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 wastewater treatment facility located at 9543 Morris Drive in Hawk Cove, Hunt 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. 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 \$39,525 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$890 of the penalty, and \$7,905 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.

The remaining amount of \$30,730 of the undeferred penalty shall be paid in 35 monthly payments of \$878 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If the Respondent fails to comply with the payment requirements of this Order, including the payment schedule, the Executive Director may accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. The Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by the Respondent to timely and satisfactorily comply with all the

terms and conditions of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

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.
9. The Executive Director recognizes that by October 18, 2021, the Respondent implemented corrective measures at the Facility by modifying the fencing at the Red Bird Lift Station.

II. ALLEGATIONS

1. During a record review for the Facility conducted on November 19, 2020, an investigator documented that the Respondent:
 - a. 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. WQ0014522001, Operational Requirements No. 1. Specifically, the Morris Street Lift Station pumps were inoperable, and the Indian Trail Lift Station was only equipped with one operable pump. Additionally, routine inspections of the collections systems, including the lift stations, were not conducted.
 - b. Failed to submit a complete annual sludge report ("ASR") to the TCEQ by September 30th of each year, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (17) and TPDES Permit No. WQ0014522001, Sludge Provisions, Section IV(C). Specifically, the ASR for the monitoring period ending July 31, 2019 was not submitted to the TCEQ Enforcement Division and the Dallas/Fort Worth Regional Office by September 30, 2019.

- c. Failed to maintain records of properly completed trip tickets, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (11)(B) and TPDES Permit No. WQ0014522001, Sludge Provisions, Section IV(B). Specifically, sludge trip ticket manifests from April 2016 to April 2020 were not complete and did not contain all the required signatures and dates. Additionally, the December 31, 2018 manifest incorrectly labeled the waste as "Septic" when it should have been labeled as "Other-Wastewater Sludge."
 - d. Failed to calibrate the flow meter at least annually to ensure accuracy, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0014522001, Monitoring and Reporting Requirements No. 5. Specifically, the flow meter was last calibrated on October 22, 2018.
 - e. Failed to assure the quality of all measurements through the use of blanks, standards, duplicates, and matrix spikes, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.6 and TPDES Permit No. WQ0014522001, Monitoring and Reporting Requirements No. 1. Specifically, standard analyses for total chlorine residual were being performed once every three months, instead of the required frequency to provide the minimum quality assurance requirements.
 - f. Failed to submit monitoring results at intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and TPDES Permit No. WQ0014522001, Monitoring and Reporting Requirements No. 1. Specifically, the discharge monitoring reports ("DMRs") for the months of February 2020 through September 2020 were not submitted.
 - g. Failed to timely submit monitoring results at intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and TPDES Permit No. WQ0014522001, Monitoring and Reporting Requirements No. 1. Specifically, the DMRs for the months of October 2019 through January 2020 were not submitted by the 20th day of the following month.
 - h. Failed to provide notification of changes to the contracted third party operation of the Facility, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0014522001, Other Requirements Nos. 7 and 10. Specifically, the third party operating services were terminated in January 2019, and the Respondent did not provide notification of the break in service or a copy of the contract between the Respondent and the new third party operator.
 - i. Failed to secure the lift station in an intruder-resistant manner, in violation of 30 TEX. ADMIN. CODE § 317.3(a). Specifically, the Red Bird Lift Station had a large gap between a portion of the fence and the ground.
2. During a record review for the Facility conducted on April 30, 2021, an investigator documented that the Respondent failed to maintain authorization to discharge wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.65. Specifically, TPDES Permit No. WQ0014522001 expired on March 1, 2021, and the Respondent continued to operate the wastewater treatment facility without authorization.

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 No. 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: City of Hawk Cove, Docket No. 2021-0024-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 30 days after the effective date of this Order, update operational guidance and conduct employee training to ensure:
 - i. Routine inspections of the collection system, including the lift stations, are conducted;
 - ii. Self-reporting requirements are properly accomplished, including timely submittal of signed and certified ASRs;
 - iii. Records of completed trip tickets are maintained in accordance with 30 TEX. ADMIN. CODE § 312.145(a)(1)-(7);
 - iv. Standard analyses are performed in accordance with the quality assurance requirements for the analysis of total chlorine residual; and
 - v. DMRs are submitted at intervals specified in the permit; and
 - vi. Repair or replace the inoperable pumps at the Morris Street Lift Station and the inoperable pump at the Indian Trail Lift Station.
 - b. Within 45 days after the effective date of this Order, submit written certification, as described in Ordering Provision No. 2.f below, to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.a.vi.
 - c. Within 60 days after the effective date of this Order:
 - i. Calibrate the flow meter;

- ii. Submit the DMRs for the months of February 2020 through September 2020; and
 - iii. Provide notification of changes to the Facility's third-party operations and a copy of the contract between the Respondent and the new third-party operator to the TCEQ.
- d. Within 75 days after the effective date of this Order, submit written certification, as described in Ordering Provision No. 2.f below, to demonstrate compliance with Ordering Provision Nos. 2.c.i through 2.c.iii.
- e. Within 300 days after the effective date of this Order, prepare and submit a permit application and obtain authorization to discharge wastewater.
- f. Within 315 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. 2.e. 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. 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.
5. 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.

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. 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.
8. 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.
9. 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

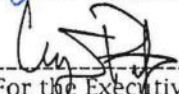
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



For the Commission

12/6/23

Date



For the Executive Director

10/16/2023

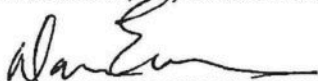
Date

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

8-21-2023

Date

Doreen EVANS

Name (Printed or typed)
Authorized Representative of
City of Hawk Cove

Mayor

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.

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 7, 2023

FIRST CLASS MAIL

The Honorable Darren Evans, Mayor
City of Hawk Cove
1585 Maria Street
Quinlan, Texas 75474

RE: City of Hawk Cove
TCEQ Docket No. 2021-0024-MWD-E; Permit No. WQ0014522001
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 Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Amy Davis of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis
Chief Clerk

LG/ad

Enclosure

cc: Mistie Gonzales, Enforcement Coordinator, TCEQ Enforcement Division