

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Erin E. Chancellor, *Interim Executive Director*



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

June 8, 2023

FIRST CLASS MAIL

The Honorable Andrew Biery, Mayor  
City of Austwell  
P.O. Box 147  
Austwell, Texas 77950

RE: City of Austwell  
TCEQ Docket No. 2021-0542-MWD-E; Permit No. WQ001117001  
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: Adena Crider, SEP Coordinator, TCEQ Enforcement Division  
Cheryl Thompson, Enforcement Coordinator, TCEQ Enforcement Division

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



JUN 08 2023

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE  
SEAL OF OFFICE ON  
*Aurica Sharma*  
TRAINING CHAIRS, CLERK, CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF AUSTWELL  
RN101608347

§  
§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2021-0542-MWD-E

I. JURISDICTION AND STIPULATIONS

On MAY 31 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 Austwell (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 approximately 80 feet southwest of the intersection of Main Street and Stevens Street in Austwell, Refugio 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 \$17,687 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The amount of \$3,537 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, \$14,150 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.

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 the Respondent implemented the following corrective measures at the Facility:
  - a. By April 5, 2021, had the reduced-pressure backflow assembly ("RPBA") tested by a licensed tester;
  - b. By May 5, 2021, removed the build-up of algae in the clarifier;
  - c. By May 5, 2021, repaired or replaced the flow chart recorder; and
  - d. By May 26, 2021, submitted a complete Annual Sludge Report ("ASR") for 2019 and 2020.

## II. ALLEGATIONS

During a record review conducted for the Facility on March 31, 2021, an investigator documented that the Respondent:

1. 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. WQ0011117001, Operational Requirements No. 1. Specifically, the chlorination room fan and flow chart recorder were inoperable, and the clarifier had a buildup of algae on the weirs and in the outer ring channel.
2. Failed to submit a complete 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. WQ0011117001, Section II, F. Reporting Requirements. Specifically, the 2019 and 2020 ASRs were not submitted to the TCEQ.
3. Failed to accurately report monitoring activities, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (12), and TPDES Permit No. WQ0011117001, Permit Conditions No. 1.a.

Specifically, the total chlorine residual minimum and maximum concentration values were switched for the months of July and December 2019, and February and June 2020.

4. Failed to test the RPBA annually, in violation of 30 TEX. ADMIN. CODE § 317.4(a)(8). Specifically, the last date of testing was March 19, 2019.
5. Failed to maintain monitoring and reporting records at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(B) and 319.7(a) and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements No. 3. Specifically, the dissolved oxygen meter calibration records were not recorded for the month of July 2019 and the individual sample analysis time for each sample collected was not being recorded.

### 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 Austwell, Docket No. 2021-0542-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 an SEP as set forth in Section I, Paragraph No. 4. The amount of \$14,150 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:
    - i. Repair or replace the chlorination room fan;
    - ii. Submit updated discharge monitoring reports to reflect the actual sample results for July and December 2019 and February and June 2020; and

- iii. Implement procedures and conduct employee training to ensure monitoring and reporting records are properly maintained, including dissolved oxygen meter calibration records and individual sample analysis times.
- 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 Nos. 3.a.i. through 3.a.iii. 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, R-04  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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. 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 Enforcement Division 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

  
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For the Commission

6/6/23  
-----  
Date

  
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For the Executive Director


4/12/2023  
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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.

  
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Signature

12-29-2022  
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Date

Andrew Bierf  
-----  
Name (Printed or typed)  
Authorized Representative of  
City of Austwell

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.

Attachment A

Docket Number: 2021-0542-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

<b>Respondent:</b>	City of Austwell
<b>Penalty Amount:</b>	Fourteen Thousand One Hundred Fifty Dollars (\$14,150)
<b>SEP Offset Amount:</b>	Fourteen Thousand One Hundred Fifty Dollars (\$14,150)
<b>Type of SEP:</b>	Compliance
<b>Project Name:</b>	WWTP Improvements
<b>Location of SEP:</b>	Refugio County

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

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 two 32 kilowatt generators with automated transfer switches at the Facility. The SEP will provide a power supply that will switch automatically in the event of a power outage at the Facility. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment for one or more of the following: generators and transfer switches (the "Project"). Respondent shall solicit bids from qualified contractors to perform the Project. Any invitation for bids, including publication, related to the SEP must include the enforcement statement as stated 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.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to 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 preventing wastewater discharges being released into the environment during the collection process.



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 in Section 1, above, 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.

**Estimated Cost Schedule**

Item	Quantity	Cost	Units	Total
32 kW Generac Generators	2	\$14,500	Each	\$29,000
200 AMP ATS 480V Transfer Switches	2	\$1,940	Each	\$3,880
Shipping	1	\$800	Lump Sum	\$800
<b>Total</b>				<b>\$33,680</b>

**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 45 days after the effective date of this Agreed Order.

**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 the TCEQ describing actions performed to date to implement the Project. Within 45 days Respondent shall submit a Final Report to the TCEQ containing detailed information on all actions completed on the Project.

**Reporting Schedule**

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

**B. Final Report**

Within 45 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 the TCEQ, which shall include the following:

1. 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. Detailed map showing specific location of the project site(s);
7. Copies of all engineering plans related to work performed pursuant to the Project, if applicable;
8. Equipment logs showing the hours the equipment was utilized on the project, if applicable;
9. Dated photographs of the purchased materials and supplies; before and after work being performed during the Project; and of the completed Project; and
10. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

**C. Address**

Respondent shall submit all SEP reports and any additional information as requested 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**

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 the 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 in Sections 2 through 4 above, the Executive Director ("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:

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

**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 the 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 the TCEQ or any other agency of the state or federal government.