

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0323-MWD-E **TCEQ ID:** RN101702397 **CASE NO.:** 32859

RESPONDENT NAME: Texas H₂O, Inc.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Canyon Creek Wastewater Treatment Plant, located adjacent to Lake Granbury approximately two miles north of the intersection of Farm-to-Market Roads 2425 and 3210, Walters Bend, Hood County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 23, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Jess Lewellyn, CEO/Registered Agent, Texas H₂O, Inc., 208 East Broad Street, Suite 109, Mansfield, Texas 76063 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 9, 2007</p> <p>Date of NOV/NOE Relating to this Case: February 27, 2007 (NOE)</p> <p>Background Facts: This was a routine record review. Two violations were documented.</p> <p>WATER</p> <p>1) Failed to comply with permitted effluent limitations [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013786001, Effluent Limitations and Monitoring Requirements No.1].</p> <p>2) Failed to timely submit the annual sludge report for the monitoring period from August 1, 2005 to July 31, 2006 by September 1, 2006 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0013786001, Sludge Provisions].</p>	<p>Total Assessed: \$6,929</p> <p>Total Deferred: \$1,385 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,112 (remaining \$4,432 due in 4 monthly payments of \$1,108 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Texas H₂O has implemented the following corrective measures at the Facility:</p> <p>a. By December 31, 2006, achieved compliance with the permitted effluent limitations by installing a lock on the lift station where unauthorized waste was suspected to be entering the system, removing the sludge contaminated by such contributions, and flushing the treatment units to diminish the effects of the contaminants; and</p> <p>b. On March 19, 2007, submitted the annual sludge report for the monitoring period from August 1, 2005 to July 31, 2006.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

DATES	Assigned	5-Mar-2007	Screening	6-Mar-2007	EPA Due	
	PCW	6-Mar-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Texas H2O, Inc.
Reg. Ent. Ref. No.	RN101702397
Facility/Site Region	4
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32859	No. of Violations	2	
Docket No.	2007-0323-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp	
Multi-Media		EC's Team	Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

Total EB Amounts Subtotal 6
Approx. Cost of Compliance 0% Enhancement*
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 6-Mar-2007

Docket No. 2007-0323-MWD-E

PCW

Respondent Texas H2O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32859

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101702397

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	15	75%
	Other written NOV's	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 79%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Respondent self-reported 15 effluent violations and received two NOV's without same or similar violations to those within this case.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 79%

Screening Date 6-Mar-2007

Docket No. 2007-0323-MWD-E

PCW

Respondent Texas H2O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32859

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101702397

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. WQ0013786001, Effluent Limitations and Monitoring Requirements No.1

Violation Description Failed to comply with permitted effluent limitations, as documented on February 9, 2007 (see Effluent Violation Table).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate 5-day biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids concentrations were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4

152 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$4,000

Four quarterly events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$6,760

This violation Final Assessed Penalty (adjusted for limits) \$6,760

Economic Benefit Worksheet

Respondent Texas H2O, Inc.
Case ID No. 32859
Reg. Ent. Reference No. RN101702397
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	31-Jan-2006	31-Dec-2006	0.9	\$23	n/a	\$23

Notes for DELAYED costs

Cost is estimate for determination of the source of the effluent excursions and resolving them by installing a lock on the lift station where source of contaminants was suspected to have been added, removing the sludge contaminated by the outside source, and flushing the treatment units to diminish the effects of the contaminants. Date required is the first documented excursion and the final date is the date compliance was achieved.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23

Screening Date 6-Mar-2007

Docket No. 2007-0323-MWD-E

PCW

Respondent Texas H2O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32859

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101702397

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. WQ0013786001, Sludge Provisions

Violation Description Failed to timely submit the annual sludge report for the monitoring period from August 1, 2005 to July 31, 2006 by September 1, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
				x	
Notes	About 30 percent of the permit requirement was not met.				

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 186 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$169

This violation Final Assessed Penalty (adjusted for limits) \$169

Economic Benefit Worksheet

Respondent Texas H2O, Inc.
Case ID No. 32859
Reg. Ent. Reference No. RN101702397
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	1-Sep-2006	19-Mar-2007	0.5	\$3	n/a	\$3

Notes for DELAYED costs

Cost is estimate for the administrative costs associated with the submittal of annual sludge report. Date required is the date due and final date is the date compliance was achieved.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Texas H₂O, Inc.
 RN101702397
 Docket No. 2007-0323-MWD-E
 Effluent Violation Table
 Violation No. 1

Month in 2006	Daily Avg. TSS Conc. Limit= 15 mg/L	Single Grab TSS Conc. Limit = 60 mg/L	Daily Avg. BOD ₅ Conc. Limit= 10 mg/L	Single Grab BOD ₅ Conc. Limit= 35 mg/L
January	24.5	82	15.62	53
April	c	c	23.9	55
September	c	c	25.12	47
October	c	c	21.8	59
November	c	c	15.5	c

TSS: total suspended solids Conc.: concentration mg/L: milligrams per liter
 BOD₅: five-day biochemical oxygen demand Avg.: average c: compliant

Compliance History

Customer/Respondent/Owner-Operator: CN600656201 Texas H2O, Inc. Classification: AVERAGE Rating: 0.69
 Regulated Entity: RN101702397 CANYON CREEK WWTP Classification: AVERAGE Site Rating: 0.69
 ID Number(s): WASTEWATER PERMIT WQ0013786001
 WASTEWATER PERMIT TPDES0089338
 WASTEWATER PERMIT TX0089338
 WASTEWATER PERMIT WQ0013786001
 WASTEWATER PERMIT TX0089338
 Location: LOCATED ADJACENT TO LAKE GRANBURY Rating Date: 9/1/2006 Repeat Violator: NO
 APPROXIMATELY 2 MI N OF THE INTERSECTION
 OF FM 2425 AND FM 3210 IN WALTERS BEND IN
 HOOD COUNTY
 TCEQ Region: REGION 04 - DFW METROPLEX
 Date Compliance History Prepared: March 05, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: March 05, 2002 to March 05, 2007
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Merrilee Hupp Phone: 512-239-4490

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 N/A
- B. Any criminal convictions of the state of Texas and the federal government.
 N/A
- C. Chronic excessive emissions events.
 N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|----|------------|----------|
| 1 | 03/20/2002 | (211693) |
| 2 | 04/25/2002 | (211696) |
| 3 | 05/22/2002 | (211698) |
| 4 | 06/18/2002 | (211704) |
| 5 | 06/28/2002 | (211700) |
| 6 | 07/29/2002 | (211702) |
| 7 | 08/23/2002 | (211705) |
| 8 | 08/29/2002 | (7310) |
| 9 | 09/12/2002 | (211708) |
| 10 | 10/17/2002 | (211711) |
| 11 | 11/25/2002 | (211714) |
| 12 | 12/30/2002 | (211717) |
| 13 | 01/17/2003 | (211720) |
| 14 | 03/04/2003 | (211691) |
| 15 | 03/27/2003 | (211694) |
| 16 | 04/28/2003 | (317994) |
| 17 | 05/21/2003 | (317995) |
| 18 | 06/16/2003 | (317996) |
| 19 | 07/31/2003 | (317997) |

20	08/29/2003	(20832)
21	09/26/2003	(317999)
22	09/29/2003	(250316)
23	10/01/2003	(249584)
24	10/03/2003	(317998)
25	10/16/2003	(318000)
26	12/04/2003	(318001)
27	12/15/2003	(318002)
28	01/22/2004	(318003)
29	02/20/2004	(317992)
30	03/24/2004	(317993)
31	04/26/2004	(477385)
32	06/01/2004	(477387)
33	07/06/2004	(477389)
34	07/28/2004	(477391)
35	09/20/2004	(477395)
36	10/20/2004	(477397)
37	11/17/2004	(477399)
38	12/06/2004	(477393)
39	12/30/2004	(477401)
40	01/20/2005	(477403)
41	02/17/2005	(349356)
42	02/21/2005	(477381)
43	03/23/2005	(477383)
44	04/25/2005	(477386)
45	05/03/2005	(379184)
46	06/08/2005	(477388)
47	07/05/2005	(477390)
48	09/02/2005	(477392)
49	09/29/2005	(477396)
50	10/24/2005	(477398)
51	11/16/2005	(477394)
52	11/16/2005	(477400)
53	12/22/2005	(477402)
54	01/26/2006	(477404)
55	03/13/2006	(477382)
56	03/13/2006	(477384)
57	04/17/2006	(504020)
58	06/21/2006	(504021)
59	07/11/2006	(526393)
60	08/02/2006	(526394)
61	08/24/2006	(526395)
62	09/29/2006	(526396)
63	02/28/2007	(539956)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date	06/30/2002	(211702)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date	07/31/2002	(211705)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date	08/29/2002	(7310)		
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to comply with sludge monitoring requirements.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to comply with sludge pathogen reduction requirements.			
Self Report?	NO		Classification:	Moderate

Rqmt Prov: OP WQ0013786-001
 Description: Failure to comply with vector attraction reduction requirements.
 Date 11/30/2002 (211717)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 12/31/2002 (211720)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 05/31/2003 (317996)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 12/31/2003 (318003)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 04/30/2004 (477387)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 07/31/2004 (477393)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 02/15/2005 (349356)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 317 317.7(b)
 Description: Failure to provide adequate railings and stairways for the facility.
 Date 05/31/2005 (477390)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 06/30/2005 (477392)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 01/31/2006 (477382)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date 04/30/2006 (526393)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter
 Date: 09/30/2006
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2006

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TEXAS H₂O, INC.
RN101702397**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0323-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas H₂O, Inc. ("Texas H₂O") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Texas H₂O appear before the Commission and together stipulate that:

1. Texas H₂O owns and operates a wastewater treatment facility located adjacent to Lake Granbury approximately two miles north of the intersection of Farm-to-Market Roads 2425 and 3210 in Walters Bend, Hood County, Texas (the "Facility").
2. Texas H₂O has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Texas H₂O agree that the Commission has jurisdiction to enter this Agreed Order, and that Texas H₂O is subject to the Commission's jurisdiction.
4. Texas H₂O received notice of the violations alleged in Section II ("Allegations") on or about March 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Texas H₂O of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Nine Hundred Twenty-Nine Dollars (\$6,929) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Texas H₂O has paid One Thousand One Hundred Twelve Dollars (\$1,112) of the

administrative penalty and One Thousand Three Hundred Eighty-Five Dollars (\$1,385) is deferred contingent upon Texas H₂O's timely and satisfactory compliance with all the terms of this Agreed Order. If Texas H₂O fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Texas H₂O to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Four Hundred Thirty-Two Dollars (\$4,432) of the administrative penalty shall be payable in four monthly payments of One Thousand One Hundred and Eight Dollars (\$1,108) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Texas H₂O fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Texas H₂O to meet the payment schedule of this Agreed Order constitutes the failure by Texas H₂O to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Texas H₂O 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 Texas H₂O has implemented the following corrective measures at the Facility:
 - a. By December 31, 2006, achieved compliance with the permitted effluent limitations by installing a lock on the lift station where unauthorized waste was suspected to be entering the system, removing the sludge contaminated by such contributions, and flushing the treatment units to diminish the effects of the contaminants; and
 - b. On March 19, 2007, submitted the annual sludge report for the monitoring period from August 1, 2005 to July 31, 2006.
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 Texas H₂O 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.

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

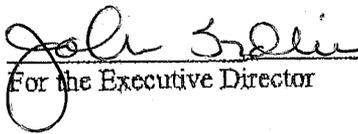
2. The provisions of this Agreed Order shall apply to and be binding upon Texas H₂O. Texas H₂O is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Texas H₂O 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.
4. If Texas H₂O 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, Texas H₂O's failure to comply is not a violation of this Agreed Order. Texas H₂O shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Texas H₂O shall notify the Executive Director within seven days after Texas H₂O become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Texas H₂O shall be made in writing to the Executive Director. Extensions are not effective until Texas H₂O receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Texas H₂O, or three days after the date on which the Commission mails notice of the Order to Texas H₂O, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Texas H₂O, Inc.
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

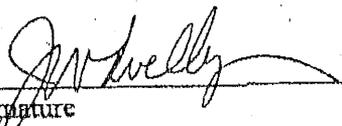
Date 9/16/07

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 further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

Date 5/22/07

Name (Printed or typed)
Authorized Representative of
Texas H₂O, Inc.

Title CEO

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.

