EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2005-1535-MWD-E **TCEQ ID:** RN102916822 **CASE NO.:** 26741

RESPONDENT NAME: City of Emory

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	X WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: City of Emory, Willow Springs Road, Emory, Rains County

TYPE OF OPERATION: Wastewater treatment plant

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 27, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Section III, MC 149, (512) 239-0789; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Central Office Investigator: Ms. Lynley Doyen, Enforcement Division, Enforcement Section V, MC 224, (512) 239-1364
Respondent: The Honorable Cay B. House, Mayor, City of Emory, P.O. Box 100, Emory, Texas 75440
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** June 29, 2005 **Date of NOE Relating to this Case:** July 21, 2005 (NOE) **Background Facts:** This was a routine record review of self-reported data. One violation was documented. **WATER** Failed to comply with effluent limits [Texas Pollution Discharge Elimination System ("TPDES") Permit No. 10082001 Interim and Final Effluent Limitations and Monitoring Requirements Nos. 1 and 6, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].	**Total Assessed:** $4,840 **Total Deferred:** $968 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $3,872 **Total Paid (Due) to General Revenue:** $0 **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken** 1) The Executive Director recognizes that the City has implemented the following corrective measures at the Facility: a. Removed sludge from the aerated lagoon in March and November 2005; b. Investigated ammonia-nitrogen removal options with consultants in March and October 2005; c. Removed sludge and added aeration and chlorination to the outlet weir box in June and July 2005; and d. Submitted a construction schedule for a new wastewater treatment plant in February 2006. **Ordering Provisions** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A). 3) It is further ordered that within 36 months after the effective date of this Agreed Order, the City shall submit written certification of compliance with the effluent limits of TPDES Permit No. 10082001 or the effluent limits of any other TPDES permit number issued by the TCEQ pursuant to the City's permit application for the new wastewater treatment plant. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.

Attachment A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty assessed in this Agreed Order with the condition that the City of Emory shall comply with the following Supplemental Environmental Project ("SEP") provisions. The total amount of the conditional offset for the SEP, upon completion according to the terms and schedules listed below, shall be Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) of the payable penalty of Three Thousand Eight Hundred Seventy-Two Dollars ($3,872).

1. Project Description

A. Project

The City of Emory will contribute to the Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") for its Abandoned Tire Clean-Up project in Rains County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Texas Association of Resource Conservation and Development Areas, Inc. and the Texas Commission on Environmental Quality***. Specifically, the contribution will be used to clean-up sites in Rains County where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project, and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The City of Emory certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing the health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires result in the contamination of surface water, ground water, air, and soil.

B. Minimum Expenditure

The offset of Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) of the administrative penalty is based upon the City of Emory's agreement to contribute Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) to the project described above and to comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, The City of Emory will make the required contribution to RC&D. The contribution, with a copy of the Agreed Order, will be mailed to:

RC&D
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. **Records and Reporting**

Concurrent with the SEP contribution payments, the City of Emory shall provide the TCEQ SEP Coordinator with copies of the checks and transmittal letters indicating contributory payments to RC&D. Copies of the checks and transmittal letters will be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If the City of Emory does not perform its obligations under this SEP in any way, including full expenditure of all required funds and the submittal of adequate reports, the Executive Director may require immediate payment of all or part of the Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) conditionally offset.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

A copy of the check shall be mailed to the TCEQ SEP Coordinator at the address in Section 3 above.

5. **Publicity**

Any public statements concerning this SEP made by, or on behalf of, the City of Emory 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, but are not limited to, advertising, public relations, and press releases.

6. **Clean Texas Program**

The City of Emory shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the City of Emory may not seek recognition for this contribution in any other State or Federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the City of Emory under any other Agreed Order negotiated with the TCEQ or any other agency of the State or Federal government.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES **Assigned** 01-Aug-2005 **PCW** 01-Sep-2005 **Screening** 01-Sep-2005 **EPA Due**

RESPONDENT/FACILITY INFORMATION

Respondent City of Emory
Reg. Ent. Ref. No. RN102916822
Facility/Site Region 5-Tyler **Major/Minor Source** Minor Source

CASE INFORMATION

Enf./Case ID No. 26741 **No. of Violations** 1
Docket No. 2005-1535-MWD-E **Order Type** 1660
Media Program(s) Water Quality **Enf. Coordinator** J. Mac Vilas
Multi-Media **EC's Team** Enforcement Team 5
Admin. Penalty $ Limit Minimum $0 **Maximum** $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $2,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 92% Enhancement *Subtotals 2, 3, & 7* $1,840

Notes: Compliance history enhancements due to 18 months of self-reported effluent violations and one NOV with non similar violations in the past five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

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

Notes: The respondent is not yet in compliance.

Economic Benefit 50% Enhancement* *Subtotal 6* $1,000

**Capped at the Total EB $ Amount*

Total EB Amounts $997,644
Approx. Cost of Compliance $3,000,000

SUM OF SUBTOTALS 1-7 **Final Subtotal** $4,840

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** $0

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

Notes:

Final Penalty Amount $4,840

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** $4,840

DEFERRAL 20% Reduction **Adjustment** -$968

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $3,872

Screening Date 01-Sep-2005 **Docket No.** 2005-1535-MWD-E **PCW**
Respondent City of Emory *Policy Revision 2 (September 2002)*
Case ID No. 26741 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102916822
Media [Statute] Water Quality
Enf. Coordinator J. Mac Vilas

Compliance History Worksheet

>> **Compliance History *Site* Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)*	18	90%
	Other written NOVs	1	2%
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 judgements 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*	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) **92%**

>> **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 Compliance history enhancements due to 18 months of self-reported effluent violations and one NOV with non similar violations in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **92%**

Screening Date 01-Sep-2005 **Docket No.** 2005-1535-MWD-E **PCW**

Respondent City of Emory *Policy Revision 2 (September 2002)*

Case ID No. 26741 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102916822

Media [Statute] Water Quality

Enf. Coordinator J. Mac Vilas

Violation Number 1

Primary Rule Cite(s) Tex. Water Code § 26.121(a) and TPDES Permit No. 10082001 Interim Effluent Limitations Nos. 1 and 6 and Final Effluent Limitations Nos. 1 and 6 and 30 Tex. Admin. Code § 305.125(1)

Secondary Rule Cite(s)

Violation Description Failed to comply with the interim permit effluent limits for the months of October and November 2004 and the final permit effluent limits for the months of January and February 2005. See effluent table for additional information.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

OR

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: A simplified model was utilized to evaluate the values of Biochemical Oxygen Demand (BOD) and other pollutants to determine whether the discharged amounts of pollutants exceed levels that are protective of human health and the environment. The BOD and other pollutants discharged at the time of the violations were insignificant and did not exceed levels that are protective of human health and the environment.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events 2

mark only one use a small x	
daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,000

Two quarterly events are recommended based on the dates of the violations.

Economic Benefit (EB) for this violation

Estimated EB Amount $997,644

Statutory Limit Test

Violation Final Penalty Total $4,840

This violation Final Assessed Penalty (adjusted for limits) $4,840

Economic Benefit Worksheet

Respondent City of Emory
Case ID No. 26741
Reg. Ent. Reference No. RN102916822
Media [Statute] 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	$3,000,000	01-Oct-2004	01-Jul-2009	4.8	$47,507	$950,137	$997,644
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)				0.0	$0	n/a	$0

Notes for DELAYED costs Estimated costs of building a new wastewater treatment plant needed to alleviate the ammonia nitrogen exceedances and other issues. Date required is the starting month of the violation and the final date is the estimated date of compliance.

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 $3,000,000

TOTAL $997,644

Effluent Limit Violation Table

rev. 12/11/

Respondent	City of Emory
ID Number(s)	TPDES Permit No. 10082001
Docket Number	2005-1535-MWD-E
Enf. Coordinator	J. Mac Vilas

Corresponds to Violation Number: 1

EFFLUENT PARAMETER

Permit Limit

Month/Year	DO Miniumm * Interim effluent permit limits though 12/18/04. *Final permit limits in effect on 12/19/04	NH3-N Daily Average * Final Effluent limts in effect 12/19/04	NH3- N Daily Maximum *Final Effluent limts in effect 12/19/04	Flow Daily Average									
	4.0 mg/l - interim limits, *6.o mg/l - final limis	*10 lbs/day / 6 mg/l	15 mg/l	0.20 MGD									
October 2004	3.8	N/A	N/A	c									
November 2004	c	N/A	N/A	.222									
*January 2005	4.4	24.8 / 15.7	18	c									
*February 2005	4.0	18.5/ 16.65	19.40	c									

Name	Abbreviation
milligrams per liter	mg/L
pounds per day	lbs/day
million gallons per day	MGD
total suspended solids	TSS
5-day biochemical oxygen demand	BOD5
carbonaceous biochemical oxygen demand	CBOD
ammonia-nitrogen	NH3-N
dissolved oxygen	DO
compliant (no excursions)	c

Compliance History

Customer/Respondent/Owner-Operator:	CN600662753	City of Emory		Classification: AVERAGE	Rating: 0.830
Regulated Entity:	RN102916822	CITY OF EMORY		Classification: AVERAGE	Site Rating: 0.97
ID Number(s):	WASTEWATER		PERMIT		TX0026328
	WASTEWATER		PERMIT		TPDES0026328
	WASTEWATER		PERMIT		WQ0010082001
	WASTEWATER LICENSING		LICENSE		WQ0010082001
Location:	WILLOW SPRINGS ROAD, EMORY, TX, 75440			Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 05 - TYLER				
Date Compliance History Prepared:	August 30, 2005				
Agency Decision Requiring Compliance History:	Enforcement				
Compliance Period:	August 30, 2000 to August 30, 2005				

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: J. Mac Vilas, P.G. Phone: (512) 239-2557

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
6. Comments:	

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.)

01/16/2001	(173686)
01/11/2002	(173687)
03/14/2001	(38863)
01/10/2003	(173688)
01/16/2004	(301819)
03/07/2003	(24037)
02/07/2002	(173649)
02/14/2003	(173650)
03/19/2001	(173651)
03/08/2002	(173652)
02/09/2004	(262054)
03/13/2003	(173653)
03/17/2004	(354727)
05/14/2004	(354728)
07/16/2004	(354729)
04/12/2002	(173656)
10/18/2004	(354730)
04/09/2003	(173657)
09/20/2004	(354731)
10/22/2004	(354732)
05/09/2001	(173659)
05/10/2002	(173660)
05/08/2003	(173661)
06/13/2001	(173663)
06/14/2002	(173664)
03/21/2005	(383312)
11/19/2004	(383313)
07/12/2001	(173666)
12/20/2004	(383314)
07/11/2002	(173667)
01/21/2005	(383315)
08/16/2001	(173669)
08/08/2002	(173670)

09/18/2000 (173671)
09/17/2001 (173672)
09/11/2002 (173673)
10/06/2000 (173674)
10/12/2001 (173675)
02/17/2004 (301808)
10/09/2002 (173676)
04/12/2004 (301809)
10/16/2003 (248374)
06/13/2003 (301810)
11/10/2000 (173678)
11/16/2001 (173679)
01/13/2005 (346244)
06/24/2004 (301811)
07/11/2003 (301812)
11/07/2002 (173680)
08/06/2003 (301813)
09/19/2003 (301814)
07/25/2005 (398200)
10/13/2003 (301816)
12/18/2000 (173682)
11/14/2003 (301817)
12/12/2003 (301818)
12/15/2001 (173683)
12/12/2002 (173684)

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

Date: 12/31/2001 (173687)
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: 03/19/2001 (38863)
Self Report? NO Classification: Moderate
Rqmt Prov: OP II.F.
Description: Failure to submit annual sludge report

Date: 11/30/2003 (301818)
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 (301819)
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: 02/28/2003 (173653)
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: 04/30/2002 (173660)
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: 02/28/2005 (383312)
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: 10/31/2004 (383313)
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: 06/30/2001 (173666)
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: 11/30/2004 (383314)
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: 07/31/2001 (173669)
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: 08/31/2000 (173671)
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: 08/31/2001 (173672)
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 (301810)
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: 10/31/2001 (173679)
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: 09/30/2003 (301816)
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: 10/31/2003 (301817)
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: 11/30/2000 (173682)
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: 01/31/2005
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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CITY OF EMORY	§	
RN102916822	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2005-1535-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 the City of Emory ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located on Willow Springs Road in Emory, Rains County, Texas (the "Facility").

2. The City has discharged sewage and municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

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

4. The City received notice of the violations alleged in Section II ("Allegations") on or about July 26, 2005.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Four Thousand Eight Hundred Forty Dollars ($4,840) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Nine Hundred Sixty-Eight Dollars ($968) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require

the City to pay all or part of the deferred penalty. Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:

   a. Removed sludge from the aerated lagoon in March and November 2005;
   b. Investigated ammonia-nitrogen removal options with consultants in March and October 2005;
   c. Removed sludge and added aeration and chlorination to the outlet weir box in June and July 2005; and
   d. Submitted a construction schedule for a new wastewater treatment plant in February 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 the City has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to comply with effluent limits, in violation of Texas Pollution Discharge Elimination System ("TPDES") Permit No. 10082001 Interim and Final Effluent Limitations and Monitoring Requirements Nos. 1 and 6, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on June 29, 2005 as described below.

Parameter and Permitted Limit	Reported Value	Month of Violation
Dissolved Oxygen ("DO") - Interim effluent permit limit, minimum 4.0 milligrams per liter ("mg/l")	3.8	October 2004
DO - Final effluent permit limit minimum 6.0 mg/l	4.4 4.0	January 2005 February 2005
Ammonia Nitrogen ("NH3-N") Final effluent permit limit daily average loading 10 pounds per day ("lbs/day")	24.8 18.5	January 2005 February 2005
NH3-N Final effluent permit limit daily average concentration 6 mg/l	15.7 16.65	January 2005 February 2005
NH3-N Final effluent permit limit maximum 15 mg/l	18 19.4	January 2005 February 2005
Flow Daily Average 0.20 million gallons per day ("MGD")	0.222	November 2004

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Emory, Docket No. 2005-1535-MWD-E" to:

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

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that within 36 months after the effective date of this Agreed Order, the City shall submit written certification of compliance with the effluent limits of TPDES Permit No. 10082001 or the effluent limits of any other TPDES permit number issued by the TCEQ pursuant to the City's permit application for the new wastewater treatment plant. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

5/15/06
Date

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

March 9-06
Date

Cay B. House
Name (Printed or typed)
Authorized Representative of
City of Emory

Mayor of Emory
Title

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

Attachment A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative penalty assessed in this Agreed Order with the condition that the City of Emory shall comply with the following Supplemental Environmental Project ("SEP") provisions. The total amount of the conditional offset for the SEP, upon completion according to the terms and schedules listed below, shall be Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) of the payable penalty of Three Thousand Eight Hundred Seventy-Two Dollars ($3,872).

1. Project Description

A. Project

The City of Emory will contribute to the Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") for its Abandoned Tire Clean-Up project in Rains County. The contribution will be used in accordance with the ***Supplemental Environmental Project Agreement between the Texas Association of Resource Conservation and Development Areas, Inc. and the Texas Commission on Environmental Quality***. Specifically, the contribution will be used to clean-up sites in Rains County where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project, and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The City of Emory certifies that there is no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing the health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires result in the contamination of surface water, ground water, air, and soil.

B. Minimum Expenditure

The offset of Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) of the administrative penalty is based upon the City of Emory's agreement to contribute Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) to the project described above and to comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, The City of Emory will make the required contribution to RC&D. The contribution, with a copy of the Agreed Order, will be mailed to:

RC&D
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. **Records and Reporting**

Concurrent with the SEP contribution payments, the City of Emory shall provide the TCEQ SEP Coordinator with copies of the checks and transmittal letters indicating contributory payments to RC&D. Copies of the checks and transmittal letters will be mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If the City of Emory does not perform its obligations under this SEP in any way, including full expenditure of all required funds and the submittal of adequate reports, the Executive Director may require immediate payment of all or part of the Three Thousand Eight Hundred Seventy-Two Dollars ($3,872) conditionally offset.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

A copy of the check shall be mailed to the TCEQ SEP Coordinator at the address in Section 3 above.

5. **Publicity**

Any public statements concerning this SEP made by, or on behalf of, the City of Emory 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, but are not limited to, advertising, public relations, and press releases.

6. **Clean Texas Program**

The City of Emory shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the City of Emory may not seek recognition for this contribution in any other State or Federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the City of Emory under any other Agreed Order negotiated with the TCEQ or any other agency of the State or Federal government.