

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2006-2196-MWD-E **TCEQ ID:** RN101246601 **CASE NO.:** 32064

**RESPONDENT NAME:** Via Bayou, Inc.

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Via Bayou RV Park, 10000 San Leon Drive, Galveston County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 4, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Suzanne Walrath, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2134; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468  <b>Respondent:</b> Mr. Bob Case, Vice President, Via Bayou, Inc., 10000 San Leon Drive, Texas City, Texas 77539  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      None</p> <p><b>Date of Investigation Relating to this Case:</b>                      November 29, 2006</p> <p><b>Date of NOE Relating to this Case:</b> December 7, 2006 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review. One violation was documented.</p> <p><b>WATER</b></p> <p>Failed to comply with the permit effluent limits [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 14326001, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001A].</p>	<p><b>Total Assessed:</b> \$9,150</p> <p><b>Total Deferred:</b> \$1,830  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$2,440 (remaining \$4,880 to be paid in 2 monthly payments of \$2,440 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that on January 11, 2007, Via Bayou completed repairs on the aeration system.</p> <p><b>Ordering Provisions:</b></p> <p>2) The Order will require the Respondent to, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 14326001. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	11-Dec-2006	<b>Screening</b>	21-Dec-2006	<b>EPA Due</b>	
	<b>PCW</b>	26-Jan-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Via Bayou, Inc.
<b>Reg. Ent. Ref. No.</b>	RN101246601
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	32064	<b>No. of Violations</b>	1
<b>Docket No.</b>	2006-2196-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Suzanne Walrath
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$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**

192% Enhancement

Notes

A 192% enhancement is recommended for having 34 same or similar NOV's for effluent data (33 of which were self-reported), one NOV for not the same or similar violations, and one 1660 order.

**Culpability**

No

0% Enhancement

**Subtotal 4**

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**

0% Reduction

**Subtotal 5**

Before NOV      NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement\*

**Subtotal 6**

Total EB Amounts	\$683
Approx. Cost of Compliance	\$6,480

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7**

**Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

-4%

**Adjustment**

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

Notes

Recommended reduction in the penalty so that monthly self-reported effluent violations do not overly-impact the penalty amount.

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT**

**Final Assessed Penalty**

**DEFERRAL**

20%

Reduction

**Adjustment**

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

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

Screening Date 21-Dec-2006

Docket No. 2006-2196-MWD-E

PCW

Respondent Via Bayou, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32064

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101246601

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

### 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)	34	170%
	Other written NOV's	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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 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) 192%

>> 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

A 192% enhancement is recommended for having 34 same or similar NOV's for effluent data (33 of which were self-reported), one NOV for not the same or similar violations, and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 192%

Screening Date 21-Dec-2006

Docket No. 2006-2196-MWD-E

PCW

Respondent Via Bayou, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32064

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101246601

Media [Statute] Water Quality

Enf. Coordinator Suzanne Walrath

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. 0014326001, Effluent Limitations and Monitoring Requirements No. 1 (for Outfall 001A)

Violation Description Failed to comply with the permitted effluent limits as documented during a record review conducted on November 29, 2006. See attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate Total Ammonia Nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Flow and CBOD5 reported values 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 3 Number of violation days 211

daily	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended for outfall 001.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$683

Violation Final Penalty Total \$9,150

This violation Final Assessed Penalty (adjusted for limits) \$9,150

## Economic Benefit Worksheet

**Respondent** Via Bayou, Inc.  
**Case ID No.** 32064  
**Reg. Ent. Reference No.** RN101246601  
**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
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No commas or \$

### Delayed Costs

Equipment	\$2,480	1-Dec-2005	11-Jan-2007	1.1	\$9	\$184	\$193
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$4,000	1-Dec-2005	1-Sep-2007	1.8	\$23	\$467	\$490
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

These are actual costs for the repair of the aeration system, and estimated costs for additional oversight and sampling which could have reduced or alleviated the exceedances. The date required is the date the noncompliances began, and the final dates are the date repairs were completed on the aeration system, and the date compliance is expected to be 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

\$6,480

TOTAL

\$683

**Effluent Violation Table**  
**Via Bayou, Inc.**  
**Docket No. 2006-2196-MWD-E, RN101246601**

Permitted Effluent Limits	Monitoring Period End Date						
	12/31/05	01/31/06	02/28/06	03/31/06	04/30/06	05/31/06	06/30/06
CBOD Daily Avg. 10 mg/L	C	C	13	C	18.25	C	C
CBOD Single Grab Max. 35 mg/L	C	C	C	42	36	C	C
NH3-N Daily Avg. 3 mg/L	25.4	14.8	C	9.0	10.68	8.92	6.5
NH3-N Single Grab Max. 15 mg/L	69.3	29.2	C	24.2	16.2	C	C
Avg. = average			C = compliant			mg/L = milligrams per liter	
CBOD = Carbonaceous Biochemical Oxygen Demand			NH3-N = Ammonia Nitrogen				



# Compliance History

Customer/Respondent/Owner-Operator:	CN601463946 Via Bayou, Inc.	Classification: AVERAGE	Rating: 3.35
Regulated Entity:	RN101246601 VIA BAYOU RV PARK	Classification: AVERAGE	Site Rating: 3.35
ID Number(s):	WASTEWATER PERMIT	WQ0014326001	
	WASTEWATER PERMIT	TPDES0124761	
	WASTEWATER PERMIT	TX0124761	
Location:	10000 San Leon Dr., Galveston County	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	January 12, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 12, 2002 to January 12, 2007		

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

Name: Suzanne Walrath Phone: 512/239-2134

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 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.
- Effective Date: 10/24/2005 ADMINORDER 2004-1544-MWD-E
- Classification: Moderate
- Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]
- Rqmt Prov: Effluent Limits PERMIT
- Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.
- 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  | 01/24/2005 | (390691) |
| 2  | 08/18/2003 | (329093) |
| 3  | 07/19/2004 | (368113) |
| 4  | 09/22/2003 | (329094) |
| 5  | 08/18/2004 | (368114) |
| 6  | 03/21/2005 | (448095) |
| 7  | 12/07/2006 | (532548) |
| 8  | 08/15/2005 | (448096) |
| 9  | 10/23/2003 | (329095) |
| 10 | 09/20/2004 | (368115) |
| 11 | 09/12/2005 | (448097) |
| 12 | 11/20/2003 | (329096) |
| 13 | 10/20/2004 | (368116) |
| 14 | 12/22/2003 | (329097) |
| 15 | 11/19/2004 | (368117) |
| 16 | 01/28/2004 | (329098) |
| 17 | 04/17/2006 | (506881) |
| 18 | 05/17/2006 | (465552) |
| 19 | 05/11/2006 | (506882) |

20 06/12/2006 (506883)  
 21 07/07/2006 (529032)  
 22 02/02/2006 (439436)  
 23 09/29/2006 (529033)  
 24 09/18/2006 (529034)  
 25 05/09/2005 (428120)  
 26 06/14/2005 (428121)  
 27 07/05/2005 (428122)  
 28 08/26/2004 (288387)  
 29 02/17/2006 (493632)  
 30 03/10/2006 (493633)  
 31 10/07/2005 (493634)  
 32 11/17/2005 (493635)  
 33 01/12/2006 (493636)  
 34 03/22/2004 (329088)  
 35 04/16/2004 (329089)  
 36 04/16/2003 (236731)  
 37 02/08/2005 (349735)  
 38 07/16/2003 (329090)  
 39 02/25/2004 (368110)  
 40 04/16/2003 (236730)  
 41 04/16/2003 (236729)  
 42 02/21/2005 (390688)  
 43 07/16/2003 (329091)  
 44 05/20/2004 (368111)  
 45 04/11/2005 (390689)  
 46 09/06/2005 (374212)  
 47 12/20/2004 (390690)  
 48 07/24/2003 (329092)  
 49 07/14/2004 (368112)

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

Date: 06/30/2003 (329092)  
 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: 05/31/2004 (368112)  
 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: 12/31/2004 (390691)  
 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: 07/31/2003 (329093)  
 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: 06/30/2004 (368113)  
 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: 02/01/2006 (439436)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)  
 Description: Failure to properly complete the Discharge Monitoring Reports (DMRs).  
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.11(a)  
 30 TAC Chapter 319, SubChapter A 319.11(b)  
 Description: Failure to perform the manganese oxide correction with each total chlorine residual analysis.  
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]  
 30 TAC Chapter 319, SubChapter A 319.7(c)  
 Description: Failure to maintain calibration and Quality Assurance/Quality Control (QA/QC) records on the pH, D.O., and chlorine field meters.  
 Date: 08/31/2003 (329094)  
 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 (368114)  
 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 (329095)  
 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: 08/31/2004 (368115)  
 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 (329096)  
 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: 09/30/2004 (368116)  
 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: 11/30/2003 (329097)  
 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 (368117)  
 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 (448095)  
 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: 03/31/2006 (506881)  
 Self Report? YES Classification: Moderate

TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter  
Date: 04/30/2006 (506882)  
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: 05/31/2006 (506883)  
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: 02/07/2005 (349735)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Rqmt Prov: PERMIT IA  
Description: Failure to comply with the permitted effluent limits for the review period of 02/04 through 10/04.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Rqmt Prov: PERMIT IA  
Description: Failure to submit noncompliance notifications for effluent violations which deviates from the permitted effluent limitations by more than 40%.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)  
Rqmt Prov: PERMIT IA  
Description: Failure to document that the effluent samples are transported at 4 degrees Celsius, as required.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to calculate the daily average loading (lbs/day) correctly.  
Date: 06/30/2006 (529032)  
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: 07/31/2006 (529033)  
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: 08/31/2006 (529034)  
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 (493632)  
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: 02/28/2006 (493633)  
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: 10/31/2005 (493635)

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: 12/31/2005 (493636)

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: 03/31/2003 (236731)

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: 02/29/2004 (329088)

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 (236730)

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: 03/31/2004 (329089)

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: 04/30/2003 (329090)

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: 01/31/2004 (368110)

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 (329091)

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 (368111)

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 (390690)

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

- 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  
VIA BAYOU, INC.  
RN101246601**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-2196-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 Via Bayou, Inc. ("Via Bayou") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Via Bayou, appear before the Commission and together stipulate that:

1. Via Bayou owns and operates a domestic wastewater system at 10000 San Leon Drive in Galveston County, Texas (the "Facility").
2. Via Bayou has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Via Bayou agree that the Commission has jurisdiction to enter this Agreed Order, and that Via Bayou is subject to the Commission's jurisdiction.
4. Via Bayou received notice of the violations alleged in Section II ("Allegations") on or about December 12, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Via Bayou of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand One Hundred Fifty Dollars (\$9,150) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Via Bayou has paid Two Thousand Four Hundred Forty Dollars (\$2,440) of the administrative penalty and One Thousand Eight Hundred Thirty Dollars (\$1,830) is deferred contingent upon



Via Bayou'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. The remaining amount of Four Thousand Eight Hundred Eighty Dollars (\$4,880) of the administrative penalty shall be payable in two monthly (2) payments of Two Thousand Four Hundred Forty Dollars (\$2,440) each. The first 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 Via Bayou 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 Via Bayou to meet the payment schedule of this Agreed Order constitutes the failure by Via Bayou to timely and satisfactorily comply with all the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Via Bayou have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that on January 11, 2007, Via Bayou completed repairs on the aeration system.
9. 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 Via Bayou has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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, Via Bayou is alleged to have failed to comply with the permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 14326001, Effluent Limitations and Monitoring Requirements No. 1 for Outfall 001A, as documented during a record review conducted on November 29, 2006. See table below.



Effluent Violation Table							
Permitted Effluent Limits	Monitoring Period End Date						
	12/31/05	01/31/06	02/28/06	03/31/06	04/30/06	05/31/06	06/30/06
CBOD Daily Avg. 10 mg/L	C	C	13	C	18.25	C	C
CBOD Single Grab Max. 35 mg/L	C	C	C	42	36	C	C
NH3-N Daily Avg. 3 mg/L	25.4	14.8	C	9.0	10.68	8.92	6.5
Permitted Effluent Limits	Monitoring Period End Date						
	12/31/05	01/31/06	02/28/06	03/31/06	04/30/06	05/31/06	06/30/06
NH3-N Single Grab Max. 15 mg/L	69.3	29.2	C	24.2	16.2	C	C
Avg. = average			C = compliant			mg/L = milligrams per liter	
CBOD = Carbonaceous Biochemical Oxygen Demand			NH3-N = Ammonia Nitrogen				

### III. DENIALS

Via Bayou generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Via Bayou pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Via Bayou'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: Via Bayou, Inc., Docket No. 2006-2196-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. It is further ordered that Via Bayou shall undertake the following technical requirements:

- a. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 14326001. 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 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 fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Quality Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Via Bayou. Via Bayou 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.
4. If Via Bayou 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, Via Bayou's failure to comply is not a violation of this Agreed Order. Via Bayou shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Via Bayou shall notify the Executive Director within seven days after Via Bayou becomes 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 Via Bayou shall be made in writing to the Executive Director. Extensions are not effective until Via Bayou receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent data collection procedures and the use of appropriate statistical techniques to interpret the results.

3. The third part of the document focuses on the implementation of the findings. It provides detailed instructions on how to apply the results to improve organizational performance and decision-making processes.

4. The fourth part of the document discusses the challenges and limitations of the research. It acknowledges that while the findings are valuable, there are certain constraints that may affect the generalizability of the results.

5. The fifth part of the document provides a conclusion and offers recommendations for future research. It suggests that further studies should be conducted to explore the long-term effects of the implemented changes.

6. The sixth part of the document includes a list of references and a bibliography. It cites various academic sources and reports that have informed the research and provide additional context for the study.

7. The seventh part of the document contains an appendix with supplementary information. This includes detailed data tables, charts, and additional figures that support the main findings of the report.

8. The eighth part of the document is a final summary and a call to action. It reiterates the key points of the report and encourages stakeholders to take the necessary steps to implement the recommendations.

6. This Agreed Order, issued by the Commission, shall not be admissible against Via Bayou 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.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Via Bayou, or three days after the date on which the Commission mails notice of the Order to Via Bayou, 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

*J. L. Sullien*  
For the Executive Director

8/9/2007  
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.

*Bob Case*  
Signature

3-21-07  
Date

Bob Case, VP  
Name (Printed or typed)  
Authorized Representative of  
Via Bayou, Inc.

V. President  
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.

