

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0994-MWD-E **TCEQ ID:** RN103016374 **CASE NO.:** 33906

RESPONDENT NAME: City of Nederland

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: City of Nederland, located immediately east of the intersection of Hardy Avenue and Avenue D, east of the main drainage canal, Nederland, Jefferson County</p> <p>TYPE OF OPERATION: Wastewater treatment</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 October 29, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Laurie Eaves, Enforcement Division, Enforcement Team I, MC 169, (512) 239-4495; Mr. Steve Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: Mr. Bert Rogers, Mayor Pro Tem, City of Nederland, P.O. Box 967, Nederland, Texas 77627 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigations Relating to this Case: February 21 and 22, 2007</p> <p>Date of NOE Relating to this Case: April 18, 2007 (NOE)</p> <p>Background Facts: On February 21, 2007, the operations company for the City of Nederland contacted the TCEQ to report a permit excursion. The pH was measured at 10 standard units. On February 22, 2007, a fish kill was reported to the TCEQ. Investigations followed on February 21, 2007 and February 22, 2007.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of partially treated wastewater into or adjacent to water in the state [30 TEX. ADMIN. CODE § 305.125(4), TPDES Permit No. 10483002, Permit Condition No. 2.d., and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$13,100</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$13,100</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: This is a Findings Order due to a fish kill of approximately 350 fish.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the City returned to compliance by March 16, 2007 by disposing of the dead fish, installing an audible level alarm on the day tank, and establishing contingency procedures and retraining employees.</p>

Additional ID No(s): WQ0010483002, TPDES0026476



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

DATES	Assigned	23-Apr-2007	Screening	22-Jun-2007	EPA Due	
	PCW	21-Jun-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Nederland
Reg. Ent. Ref. No.	RN103016374
Facility/Site Region	10-Beaumont
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	33906	No. of Violations	1	
Docket No.	2007-0994-MVD-E	Order Type	Findings	
Media Program(s)	Water Quality	Enf. Coordinator	Laurie Eaves	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	56% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$5,600
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Notes: The Respondent self-reported ten months of effluent quality violations and was issued three NOVs for violations not considered same or similar.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	25% Reduction	<i>Subtotal 5</i>	\$2,500
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent returned to compliance by March 16, 2007 by disposing of the dead fish, installing an audible level alarm on the day tank, establishing contingency procedures and retraining employees.

	0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts	\$2,503	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,500	

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$13,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE		<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

<i>Final Penalty Amount</i>	\$13,100
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$13,100
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DEFERRAL	0% Reduction	<i>Adjustment</i>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$13,100
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Screening Date 22-Jun-2007

Docket No. 2007-0994-MWD-E

PCW

Respondent City of Nederland

Policy Revision 2 (September 2002)

Case ID No. 33906

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN103016374

Media [Statute] Water Quality

Enf. Coordinator Laurie Eaves

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 (<i>number of NOV's meeting criteria</i>)	10	50%
	Other written NOV's	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
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) 56%

>> 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

The Respondent self-reported ten months of effluent quality violations and was issued three NOV's for violations not considered same or similar.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 56%

Screening Date 22-Jun-2007	Docket No. 2007-0994-MWD-E	PCW
Respondent City of Nederland		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 33906		<small>PCW Revision May 25, 2007</small>
Reg. Ent. Reference No. RN103016374		
Media [Statute] Water Quality		
Enf. Coordinator Laurie Eaves		

Violation Number	1	Rule Cite(s) Tex. Water Code § 26.121(a), Tex. Admin. Code § 305.125(4), and TPDES Permit No. 10483002, Permit Condition No. 2.d.
Violation Description		Failed to prevent the unauthorized discharge of partially treated wastewater into or adjacent to water in the state, as documented by investigations on February 21 and 22, 2007. Specifically, on February 20, 2007, 1,200 gallons of 50% sodium hydroxide were discharged from City's surface water treatment facility to the wastewater collection system. The discharge caused a die-off of microorganisms in the wastewater treatment facility which resulted in partially-treated wastewater discharging to the Jefferson County Drainage District No. 7 Main C Canal and resulted in a fish kill of approximately 350 fish. Additionally, a region-documented grab sample and a review of discharge monitoring report data revealed noncompliance with permitted effluent limits during February 2007 (see attached effluent violation chart).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	x			
Potential				Percent 100%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment \$0

\$10,000

Violation Events

Number of Violation Events 1 23 Number of violation days

<small>mark only one with an x</small>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

One monthly event is recommended from the date of the investigation on February 21, 2007 to the date of compliance on March 16, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,503

Violation Final Penalty Total \$13,100

This violation Final Assessed Penalty (adjusted for limits) \$13,100

Economic Benefit Worksheet

Respondent: City of Nederland
 Case ID No. 33906
 Reg. Ent. Reference No. RN103016374
 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	\$1,000	21-Feb-2007	16-Mar-2007	0.1	\$3	n/a	\$3
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 cost associated with establishing contingency procedures, installing an audible level alarm system on the day tank, retraining staff and cleanup/disposal of the dead fish. Date Required is the date of the investigation. Final Date is the 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)	\$2,500	21-Feb-2007	16-Mar-2007	0.0	\$0	\$2,500	\$2,500

Notes for AVOIDED costs

Estimated cost associated with isolating the caustic discharge, and pumping and hauling to a disposal facility. Date Required is the date of the investigation. Final Date is the date of compliance.

Approx. Cost of Compliance

\$3,500

TOTAL

\$2,503

Effluent Violation Chart

City of Nederland
RN103016374

Docket No: 2007-0994-MWD-E

Date/ Month	pH Maximum	TSS Daily Maximum Concentration Limit = 40 mg/L	NH3-N Daily Average Concentration Limit = 2 mg/L	NH3-N Daily Maximum Concentration Limit = 10 mg/L	CBOD5 Daily Average Concentration Limit = 7	CBOD5 Daily Maximum Concentration Limit = 25	CBOD5 Single Grab Limit = 35 mg/L
02/21/2007 Region Grab Sample	9.7	c	c	c	c	c	62
02/2007 Monthly DMR	9.9	46	2.4	12.5	7.1	35.3	c

c = compliant

TSS = total suspended solids

NH3-N = ammonia nitrogen

CBOD5 = carbonaceous five-day biochemical oxygen demand

DMR = discharge monitoring report

Compliance History

Customer/Respondent/Owner-Operator: CN600341937 City of Nederland Classification: AVERAGE Rating: 2.51
Regulated Entity: RN103016374 CITY OF NEDERLAND Classification: AVERAGE Site Rating: 1.04
ID Number(s): WASTEWATER PERMIT WQ0010483002
WASTEWATER PERMIT TX0026476000
WASTEWATER PERMIT TPDES0026476
WASTEWATER LICENSING LICENSE WQ0010483002
Location: Immediately east of the intersection of Hardy Avenue and Avenue D,
east of the main drainage canal, Nederland, Jefferson County

Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 10 – BEAUMONT
Date Compliance History Prepared: June 22, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 22, 2002 to June 22, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Laurie Eaves Phone: 512/239-4495

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 07/19/2002 (173915)
2 08/20/2002 (173919)
3 09/20/2002 (173922)
4 10/22/2002 (173925)
5 11/20/2002 (173929)
6 12/20/2002 (173933)
7 01/21/2003 (173937)
8 02/20/2003 (173896)
9 03/19/2003 (173899)
10 04/18/2003 (173904)
11 05/20/2003 (173908)
12 06/09/2003 (173916)
13 08/07/2003 (173912)
14 08/20/2003 (301918)
15 08/21/2003 (149489)
16 09/19/2003 (301920)
17 10/20/2003 (301922)
18 11/18/2003 (301923)
19 12/18/2003 (301924)
20 02/20/2004 (301909)
21 03/09/2004 (264635)
22 03/15/2004 (301911)
23 04/13/2004 (301925)
24 04/20/2004 (301912)
25 05/20/2004 (301914)
26 06/21/2004 (354765)
27 08/01/2004 (354766)
28 08/20/2004 (354767)
29 09/20/2004 (354768)
30 10/20/2004 (354769)
31 11/03/2004 (337796)
32 11/03/2004 (392426)
33 11/19/2004 (354770)
34 12/20/2004 (354771)

35 01/21/2005 (383336)
36 02/17/2005 (349808)
37 02/18/2005 (383335)
38 04/20/2005 (442138)
39 05/20/2005 (442139)
40 06/01/2005 (442137)
41 06/20/2005 (442141)
42 06/20/2005 (442145)
43 06/21/2005 (442140)
44 08/05/2005 (442142)
45 09/07/2005 (403142)
46 09/16/2005 (442143)
47 10/20/2005 (442144)
48 11/28/2005 (471037)
49 12/22/2005 (471038)
50 02/16/2006 (471034)
51 03/20/2006 (471035)
52 04/19/2006 (471036)
53 05/19/2006 (499899)
54 06/20/2006 (499900)
55 07/20/2006 (499901)
56 07/27/2006 (499902)
57 08/10/2006 (521991)
58 09/12/2006 (521992)
59 10/19/2006 (521993)
60 04/18/2007 (556300)

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

Date: 09/30/2002 (173925)
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: 06/30/2003 (173916)
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: 08/21/2003 (149489)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.2[G]
Rqmt Prov: OP WQ0010483-002
Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.3[G]
Rqmt Prov: OP WQ0010483-002
Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 317 317.4(a)(8)
Description: Failure by the permittee to conduct the required annual testing of the backflow prevention device.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(b)(1)
Rqmt Prov: OP WQ0010483-002
Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Date: 08/31/2003 (301920)
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: 12/18/2003 (257565)
Self Report? NO Classification: Moderate
Rqmt Prov: PERMIT WQ0010483-002
Description: Failure by the permittee to notify the TCEQ Regional office of an unauthorized discharge orally or by fax within 24 hours of becoming aware of the noncompliance, and written within 5 days.

Date: 01/31/2004 (301909)
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 (301914)
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 (354770)
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: 11/04/2004 (337796)
Self Report? NO Classification: Minor
Rqmt Prov: PERMIT OpR 1
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Self Report? NO Classification: Minor
Rqmt Prov: PERMIT OpR 1
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Self Report? NO Classification: Minor
Rqmt Prov: PERMIT OpR 1
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 312, SubChapter G 312.142[G]
Description: Failure to use a truck that is listed on the transporter registration to haul sludge.
Self Report? NO Classification: Minor
Rqmt Prov: PERMIT MRR 2
Description: Failure to install and maintain a flow measurement device designed in accordance with provisions of 319.11.
Self Report? NO Classification: Moderate
Rqmt Prov: PERMIT MRR 7C
Description: Failure to submit >40% noncompliance notification as required
Self Report? NO Classification: Minor
Rqmt Prov: PERMIT MRR 3C
Description: Failure to maintain complete records of calibration of the pH and dissolved oxygen meters
Self Report? NO Classification: Moderate
Rqmt Prov: PERMIT OpR 1
Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Date: 02/28/2006 (471035)
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: 06/30/2006 (499901)
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 (521991)
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: 02/28/2007
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 THE
CITY OF NEDERLAND
RN103016374

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0994-MWD-E

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 Nederland (“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 presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a wastewater treatment facility located immediately east of the intersection of Hardy Avenue and Avenue D, east of the main drainage canal, Nederland, Jefferson County, Texas (the “Facility”).

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirteen Thousand One Hundred Dollars (\$13,100) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid the Thirteen Thousand One Hundred Dollar (\$13,100) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Thirteen Thousand One Hundred Dollars (\$13,100) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Nederland, Docket No. 2007-0994-MWD-E" to:

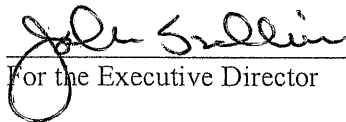
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. 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.

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. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 10/18/07

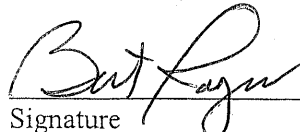
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Nederland. I am authorized to agree to the attached Agreed Order on behalf of the City of Nederland, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Nederland waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date August 20, 2007

Bert Rogers
Name (Printed or typed)
Authorized Representative of the
City of Nederland

Mayor Pro Tem
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.

