

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0371-MWD-E **TCEQ ID:** RN102963238 **CASE NO.:** 32868

RESPONDENT NAME: Benbrook, LLC

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: Benbrook Village MHP, located approximately 0.5 mile south of the intersection of U.S. Highway 377 and Farm-to-Market 1187, approximately 16 miles southwest of the City of Fort Worth central business district, Tarrant County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Team 3, MC R-04, (817) 588-5886; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Linda Chupik, Registered Agent, Benbrook, LLC, 8028 Witchita Street, Fort Worth, Texas 76140 Mr. Christopher J. Pollock, President, Benbrook, LLC, 120 W. Lexington Ave., Elkhart, IN 46516 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 Investigation Relating to this Case: January 31, 2007</p> <p>Date of NOV/NOE Relating to this Case: February 15, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Two violations were documented.</p> <p>WATER</p> <p>1) Failure to submit the Annual Sludge Report for fiscal year 2006 by September 1, 2006 [30 TEX. ADMIN CODE § 305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit No.12723001, Sludge Provisions, Reporting Requirements].</p> <p>2) Failure to maintain authorization for the discharge of wastewater [30 TEX. ADMIN. CODE § 305.42(a) and TEX. WATER CODE § 26.121].</p>	<p>Total Assessed: \$10,126</p> <p>Total Deferred: \$6,526 <input checked="" type="checkbox"/> Expedited Settlement (\$2,025) <input checked="" type="checkbox"/> Financial Inability to Pay (\$4,501)</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (remaining \$3,500 due in 35 monthly payments of \$100 each)</p> <p>The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by Benbrook, LLC and determined that Benbrook, LLC is unable to pay part of the administrative penalty.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on March 5, 2007, the Respondent submitted the Annual Sludge Report for fiscal year 2006.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <ol style="list-style-type: none"> 1) Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application; 2) Respond completely and adequately, as determined by the TCEQ, to all requests for information within 30 days after the date of such requests or by any other deadline specified in writing; 3) Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits in expired TPDES Permit No. 12723-001; and 4) Within 300 days after the effective date of this Agreed Order (or shorter time frame, if appropriate), submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

Additional ID No(s): WQ0012723001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

DATES	Assigned PCW	20-Feb-2007	Screening	28-Feb-2007	EPA Due	
		6-Mar-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Benbrook, LLC
Reg. Ent. Ref. No.	RN102963238
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32868	No. of Violations	2	
Docket No.	2007-0371-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Cheryl Thompson	
Multi-Media		EC's Team	EnforcementTeam 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

66% Enhancement

Notes

The respondent self-reported 21 months of effluent violations, two NOVs with non-similar violations and one administrative order.

Culpability **Subtotal 4**

No

0% Enhancement

Notes

Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **Subtotal 5**

0% Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement* **Subtotal 6**

Total EB Amounts	\$246
Approx. Cost of Compliance	\$2,750

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL **Adjustment**

20%

Reduction

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

Screening Date 28-Feb-2007

Docket No. 2007-0371-MWD-E

PCW

Respondent Benbrook, LLC

Policy Revision 2 (September 2002)

Case ID No. 32868

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102963238

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

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)	0	0%
	Other written NOVs	23	46%
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) 66%

>> 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 21 months of effluent violations, two NOVs with non-similar violations and one administrative order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 66%

Screening Date 28-Feb-2007

Docket No. 2007-0371-MWD-E

PCW

Respondent Benbrook, LLC

Policy Revision 2 (September 2002)

Case ID No. 32868

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102963238

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin Code § 305.125(17) and TPDES Permit No.12723001, Sludge Provisions, Reporting Requirements

Violation Description Failed to submit the Annual Sludge Report for fiscal year 2006 by September 1, 2006. The report was received on March 5, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual				0%	
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

186 Number of violation days

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

Violation Base Penalty \$100

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$166

This violation Final Assessed Penalty (adjusted for limits) \$166

Economic Benefit Worksheet

Respondent Benbrook, LLC
Case ID No. 32868
Reg. Ent. Reference No. RN102963238
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$250	1-Sep-2006	6-Mar-2007	0.5	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to submit missing report. Date required is the date the sludge report was due and the 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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$6

Screening Date 28-Feb-2007

Docket No. 2007-0371-MWD-E

PCW

Respondent Benbrook, LLC

Policy Revision 2 (September 2002)

Case ID No. 32868

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN102963238

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.42(a) and Tex. Water Code § 26.121

Violation Description Failed to maintain authorization for the discharge of wastewater. Specifically, the permit for the facility expired on September 1, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6 Number of violation days 181

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

Violation Base Penalty \$6,000

Six monthly events are recommended from the expiration date (September 1, 2006) to the screening date (February 28, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$239

Violation Final Penalty Total \$9,960

This violation Final Assessed Penalty (adjusted for limits) \$9,960

Economic Benefit Worksheet

Respondent: Benbrook, LLC
Case ID No.: 32868
Reg. Ent. Reference No.: RN102963238
Media: Water Quality
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$2,500	1-Sep-2006	31-Jul-2008	1.9	\$239	n/a	\$239
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to complete and submit a permit. The date required is the expiration date of the previous permit. The final date is the expected 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

\$2,500

TOTAL

\$239

Compliance History

Customer/Respondent/Owner-Operator: CN600797450 Benbrook, LLC Classification: AVERAGE Rating: 3.64
 Regulated Entity: RN102963238 BENBROOK VILLAGE MHP Classification: AVERAGE Site Rating: 3.64

ID Number(s): WASTEWATER PERMIT WQ0012723001
 WASTEWATER PERMIT WQ0012723001
 WASTEWATER PERMIT TPDES0093092
 WASTEWATER LICENSING LICENSE WQ0012723001

Location: located approximately 0.5 mile south of the Rating Date: September 01 06 Repeat Violator:
 intersection of U.S. Highway 377 and Farm-to-Market NO
 1187, approximately 16 miles southwest of the City of
 Fort Worth central business district in Tarrant County,
 Texas

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: March 01, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 01, 2002 to March 01, 2007

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

Name: Cheryl Thompson Phone: (817)588-5886

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 Effective Date: 08/28/2006 ADMINORDER 2005-1337-MWD-E
 Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT
 Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)

Rqmt Prov: Self-reporting Requirements PERMIT
 Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review. Specifically, Benbrook failed to submit the total suspended solids daily average concentration results in November and December 2004.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)

Rqmt Prov: Monitoring & Reporting Requirements PERMIT
 Description: Failure to submit monitoring results at the intervals specified in the permit. Specifically, Benbrook failed to submit the annual sludge discharge monitoring report that was due on September 1, 2004.

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 04/08/2002 (214900)
N/A

2 05/20/2002 (214903)

3 07/15/2002 (214909)

4 09/12/2002 (214915)

5 09/12/2002 (214914)

6 12/19/2002 (214929)

7 12/19/2002 (214925)

8 12/19/2002 (214922)

9 12/19/2002 (214919)

10 01/28/2003 (214908)

11 03/31/2003 (214901)

12 03/31/2003 (214897)

13 06/09/2003 (319301)

14 06/13/2003 (112744)

15 07/10/2003 (319300)

16 07/10/2003 (319302)

17 08/11/2003 (319303)

18 09/08/2003 (319304)

19 11/24/2003 (319305)

20 02/06/2004 (319306)

21 04/14/2004 (319298)

22 04/14/2004 (319299)

23 04/14/2004 (319307)

24 06/14/2004 (362287)

25 09/24/2004 (362286)

26 09/24/2004 (362288)

27 09/24/2004 (362289)

28 09/24/2004 (362290)

29 09/24/2004 (362291)

30 10/11/2004 (336436)

31 11/01/2004 (387633)

32 11/29/2004 (387634)

33 12/16/2004 (344234)

34 01/10/2005 (387635)

35 01/24/2005 (387636)

36 01/28/2005 (347889)

37 02/28/2005 (387631)

38 03/23/2005 (387632)

39 04/27/2005 (425336)

40 05/19/2005 (425337)

41 07/14/2005 (380663)

42 07/15/2005 (445920)

43 07/21/2005 (425338)

44 10/10/2005 (477923)

45 10/26/2005 (477924)

46 10/27/2005 (477922)

47 11/28/2005 (477925)

48 01/25/2006 (477926)

49 02/27/2006 (477920)

50 03/27/2006 (477921)

51 04/30/2006 (504348)

52 05/25/2006 (504349)

53 06/19/2006 (504350)

54 08/31/2006 (526680)

55 09/29/2006 (526681)

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

Date 03/30/2002 (214903)
 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 08/31/2002 (214919)
 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 09/30/2002 (214922)
 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 10/31/2002 (214925)
 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 (20723)
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 317 317.4(a)(8)
 30 TAC Chapter 317 317.7(i)
 Description: Failure to utilize a backflow prevention device on the hosebib used to wash
 down the wastewater treatment plant.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to contain solids within the treatment plant. A moderate quantity of
 sludge was observed in the receiving water from the outfall to approximately
 100 ft. downstream.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to accurately measure flow; flow volumes are only estimated.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]
 Description: Failure to keep complete records. Records did not contain the name of the
 person collecting chlorine samples or flow data.
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to correctly complete the discharge monitoring reports. All
 calculations are being performed accurately but information is not being
 transferred to the DMR form correctly. Multiple months of data were
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)[G]
 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to use manganese correction may result in erroneous high readings
 indicating compliance when the actual residual is below permit limitations. It
 was also noted that the operator was not using the proper high or low range
 to perform analysis.
 Self Report? NO Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to dispose of wastewater treatment plant sludge in the manner
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)
 30 TAC Chapter 305, SubChapter F 305.125(11)(C)[G]
 Description: Failure to maintain complete sludge hauling manifests. Two manifest were
 identified that were not completed in the disposal section.
 Date 04/30/2003 (319301)
 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	(319305)		
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	(319298)		
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	(319299)		
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	(362286)		
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	(362287)		
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	(362288)		
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	(362289)		
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	(362290)		
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	(362291)		
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	(387633)		
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	10/12/2004	(336436)		
Self Report?	NO		Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.5(b)[G]			
Description:	Failure to maintain treatment unit			
Self Report?	NO		Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.4(g)[G]			
Description:	Failure to maintain treatment unit			
Self Report?	NO		Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(4) 30 TAC Chapter 305, SubChapter F 305.125(5) TWC Chapter 26 26.121 TWC Chapter 26 26.121(a)(1)			

TWC Chapter 26 26.121(a)(2)
 TWC Chapter 26 26.121(a)(3)
 TWC Chapter 26 26.121(a)[G]
 TWC Chapter 26,26.121(b)
 TWC Chapter 26 26.121(c)
 TWC Chapter 26 26.121(d)
 TWC Chapter 26 26.121(e)
 TWC Chapter 26 26.121[G]

Description: Unauthorized discharge
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet permitted minimum limit for total chlorine residual.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to comply with permitted limits for BOD5, TSS, DO, and Cl2
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to retain records
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Sludge deposits in receiving stream
 Date 12/31/2004 (387636)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date 03/31/2005 (425336)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date 04/30/2005 (425337)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date 05/31/2005 (445920)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date 10/31/2005 (477925)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter
 Date 04/30/2006 (504349)
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BENBROOK, LLC
RN102963238

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0371-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 Benbrook, LLC ("Benbrook") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Benbrook appear before the Commission and together stipulate that:

1. Benbrook owns and operates a wastewater treatment facility located approximately 0.5 mile south of the intersection of U.S. Highway 377 and Farm-to-Market 1187, approximately 16 miles southwest of the City of Fort Worth central business district in Tarrant County, Texas (the "Facility").
2. Benbrook has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and Benbrook agree that the Commission has jurisdiction to enter this Agreed Order, and that Benbrook is subject to the Commission's jurisdiction.
4. Benbrook received notice of the violations alleged in Section II ("Allegations") on or about February 20, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Benbrook of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Ten Thousand One Hundred Twenty-Six Dollars (\$10,126) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by Benbrook and determined that Benbrook is unable to pay part of the administrative penalty. Therefore, Six Thousand Five Hundred Twenty-Six Dollars (\$6,526) of the penalty is deferred contingent upon Benbrook'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 Benbrook fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Benbrook to pay all or part of the deferred penalty.

Benbrook has paid One Hundred Dollars (\$100) of the undeferred administrative penalty. The remaining amount of Three Thousand Five Hundred Dollars (\$3,500) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If Benbrook 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 Benbrook to meet the payment schedule of this Agreed Order constitutes the failure by Benbrook to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Benbrook 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 on March 5, 2007, Benbrook submitted the Annual Sludge Report for fiscal year 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 Benbrook 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, Benbrook is alleged to have:

1. Failed to submit the Annual Sludge Report for fiscal year 2006 by September 1, 2006, in violation of 30 TEX. ADMIN CODE § 305.125(17) and TPDES Permit No.12723001, Sludge Provisions, Reporting Requirements, as documented during an investigation conducted on January 31, 2007.
2. Failed to maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE § 305.42(a) and TEX. WATER CODE § 26.121, as documented during an investigation conducted on January 31, 2007. Specifically, the permit for the Facility expired on September 1, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Benbrook pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Benbrook'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: Benbrook, LLC, Docket No. 2007-0371-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 Benbrook shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 300 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits in expired TPDES Permit No. 12723001;
 - b. Within 45 days after the effective date of this Agreed Order, submit an administratively complete permit application, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Water Quality Applications Team,
Permits Administrative Review Section
Registration, Review and Reporting Division, MC 161
Texas Commission on Environmental Quality
P.O. Box 13087

Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
- d. Within 300 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate that authorization to discharge wastewater has been obtained and that Benbrook is operating in compliance with that authorization. The certification shall 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 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas-Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon Benbrook. Benbrook 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 Benbrook 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, Benbrook's failure to comply is not a violation of this Agreed Order. Benbrook shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Benbrook shall notify the Executive Director within seven days after Benbrook

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 Benbrook shall be made in writing to the Executive Director. Extensions are not effective until Benbrook receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Benbrook 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 Benbrook, or three days after the date on which the Commission mails notice of the Order to Benbrook, 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

John Szallier
For the Executive Director

12/7/07
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]
Signature

10/12/07
Date

CHRISTOPHER J. POLLOCK
Name (Printed or typed)
Authorized Representative of
Benbrook, LLC

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.

