

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1614-MWD-E **TCEQ ID:** RN102184033 **CASE NO.:** 34742

RESPONDENT NAME: Restaurant Service, L.L.C.

| | | |
|--|---|--|
| 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: Restaurant, located at 16150 United States Highway 290, Jersey Village, Harris County</p> <p>TYPE OF OPERATION: Domestic wastewater treatment facility</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 March 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Harris J. Pappas, Director, Restaurant Service, L.L.C., P.O. Box 3141, Houston, Texas 77253-3141 Mr. Frank Mimkantonis, General Counsel, Restaurant Service, L.L.C., P.O. Box 3141, Houston, Texas 77253-3141 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: August 20, 2007</p> <p>Date of NOV/NOE Relating to this Case: September 28, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 13983001, which expired on March 1, 2007, and is continuing to discharge wastewater from the Facility without authorization [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2)].</p> | <p>Total Assessed: \$8,960</p> <p>Total Deferred: \$1,792 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$7,168</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 October 23, 2007, the Respondent submitted an application to obtain authorization to discharge wastewater under a new TPDES permit.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 13983001;</p> <p>b. 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</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance 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 photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c.</p> |

Additional ID No(s): WQ0013983001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

| | | | | | | |
|--------------|----------|------------|-----------|------------|---------|--|
| DATES | Assigned | 1-Oct-2007 | Screening | 8-Oct-2007 | EPA Due | |
| | PCW | 8-Oct-2007 | | | | |

| | |
|--|----------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Restaurant Service, L.L.C. |
| Reg. Ent. Ref. No. | RN102184033 |
| Facility/Site Region | 12-Houston |
| Major/Minor Source | Minor |

| | | | |
|-------------------------|-------------------|-------------------|-------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 34742 | No. of Violations | 1 |
| Docket No. | 2007-1614-MWD-E | Order Type | 1660 |
| Media Program(s) | Water Quality | Enf. Coordinator | Lynley Doyen |
| Multi-Media | | EC's Team | EnforcementTeam 1 |
| Admin. Penalty \$ | Limit Minimum \$0 | Maximum | \$10,000 |

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Subtotals 2, 3, & 7

12% Enhancement

Notes: The penalty is enhanced due to six NOV's with unrelated violations.

Culpability Subtotal 4

No 0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Subtotal 5

0% Reduction

Before NOV NOV to EDRP/Settlement Offer

| | | |
|---------------|---|---------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes: The Respondent does not meet the good faith criteria.

Subtotal 6

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

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

0%

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

20% Reduction

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 8-Oct-2007

Docket No. 2007-1614-MWD-E

PCW

Respondent Restaurant Service, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34742

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN102184033

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

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 | 6 | 12% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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% |
| <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) 12%

>> **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 penalty is enhanced due to six NOVs with unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

| | | | | |
|---|--|---|--|----------------------|
| Screening Date 8-Oct-2007 | Docket No. 2007-1614-MWD-E | PCW | | |
| Respondent Restaurant Service, L.L.C. | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 34742 | <small>PCW Revision September 19, 2007</small> | | | |
| Reg. Ent. Reference No. RN102184033 | | | | |
| Media [Statute] Water Quality | | | | |
| Enf. Coordinator Lynley Doyen | | | | |
| Violation Number <input type="text" value="1"/> | | | | |
| Rule Cite(s) | <input type="text" value="Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code §§ 305.65 and 305.125(2)"/> | | | |
| Violation Description | <input 1,="" 13983001,="" 2007,="" and="" authorization."="" continuing="" discharge="" expired="" facility="" from="" is="" march="" no.="" on="" permit="" the="" to="" tpdes")="" type="text" value="Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System (" wastewater="" which="" without=""/> | | | |
| Base Penalty | | <input type="text" value="\$10,000"/> | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | <input type="text" value="0%"/> | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> | <input type="text"/> |
| | | Percent | <input type="text" value="10%"/> | |
| Matrix Notes | <input type="text" value="100% of the rule requirement was not met."/> | | | |
| Adjustment | | <input type="text" value="\$9,000"/> | | |
| | | <input type="text" value="\$1,000"/> | | |
| Violation Events | | | | |
| Number of Violation Events | | <input type="text" value="8"/> | <input type="text" value="221"/> Number of violation days | |
| <small>mark only one with an x</small> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$8,000"/> | |
| | monthly | <input checked="" type="checkbox"/> | | |
| | quarterly | <input type="text"/> | | |
| | semiannual | <input type="text"/> | | |
| | annual | <input type="text"/> | | |
| | single event | <input type="text"/> | | |
| <input type="text" value="Eight monthly events are recommended from the date the TPDES permit expired (March 1, 2007) to the screening date (October 8, 2007)."/> | | | | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount <input type="text" value="\$836"/> | | Violation Final Penalty Total <input type="text" value="\$8,960"/> | | |
| | | This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$8,960"/> | | |

Economic Benefit Worksheet

Respondent Restaurant Service, L.L.C.
Case ID No. 34742
Reg. Ent. Reference No. RN102184033
Media Water Quality
Violation No. 1

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost <small>No commas or \$</small> | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|---|---------------|-------------|-----|----------------|---------------|-----------|
| 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 | \$10,000 | 1-Mar-2007 | 31-Oct-2008 | 1.7 | \$836 | n/a | \$836 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to prepare and submit a new permit application to obtain authorization to discharge wastewater. Date required is the date the previous permit expired. 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

\$10,000

TOTAL

\$836

Compliance History

Customer/Respondent/Owner-Operator: CN601180508 Restaurant Service, L.L.C. Classification: AVERAGE Rating: 1.04
Regulated Entity: RN102184033 RESTAURANT Classification: AVERAGE Site Rating: 1.04
ID Number(s): WASTEWATER PERMIT WQ0013983001
WASTEWATER PERMIT TPDES0095435
WASTEWATER PERMIT TX0095435
Location: 16150 US HWY 290, JERSEY VILLAGE, HARRIS CO, TX Rating Date: September 01 07
Repeat Violator: NO
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: October 08, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 08, 2002 to October 08, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lynley Doyen Phone: 512-239-1364

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 10/28/2002 (216448)
2 11/25/2002 (216451)
3 12/20/2002 (319978)
4 01/03/2003 (18923)
5 01/21/2003 (216455)
6 02/06/2003 (22912)
7 02/24/2003 (216427)
8 03/18/2003 (216430)
9 04/22/2003 (216434)
10 05/19/2003 (319965)
11 06/16/2003 (319967)
12 08/01/2003 (319969)
13 08/11/2003 (319971)
14 10/27/2003 (319975)
15 11/17/2003 (319977)
16 12/22/2003 (319979)
17 01/20/2004 (319981)
18 02/15/2004 (446052)
19 01/10/2005 (341399)
20 10/19/2005 (434598)
21 12/12/2005 (478190)
22 01/27/2006 (497017)
23 02/24/2006 (478184)
24 02/24/2006 (478185)
25 02/24/2006 (478186)
26 02/24/2006 (478188)
27 02/24/2006 (478189)
28 02/24/2006 (478191)
29 02/24/2006 (478192)
30 02/24/2006 (478193)
31 02/24/2006 (478194)
32 02/24/2006 (478195)
33 02/24/2006 (478196)
34 02/24/2006 (478197)

35 02/24/2006 (478198)
36 02/24/2006 (478199)
37 02/24/2006 (478200)
38 02/24/2006 (478201)
39 02/24/2006 (478202)
40 02/24/2006 (478203)
41 02/24/2006 (478204)
42 03/24/2006 (478187)
43 05/08/2006 (504491)
44 07/06/2006 (479782)
45 07/17/2006 (486852)
46 07/24/2006 (488131)
47 08/22/2006 (526811)
48 09/28/2007 (573123)

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

Date: 12/31/2002 (18923)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 317 317.3[G]
Description: The lift station does not have an audible or visual alarm as required by 30 TAC.

Date: 07/31/2003 (319971)

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 (478203)

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: 01/10/2005 (341399)

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to maintain compliance with the permit effluent limits for total suspended solids (TSS).

Date: 01/27/2006 (497017)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 03/31/2006 (504491)

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
RESTAURANT SERVICE, L.L.C.
RN102184033**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1614-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 Restaurant Service, L.L.C. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a domestic wastewater treatment facility located at 16150 United States Highway 290 in Jersey Village, Harris County, Texas (the "Facility").
2. The Respondent 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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 3, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Thousand Nine Hundred Sixty Dollars (\$8,960) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand One Hundred Sixty-Eight Dollars (\$7,168) of the administrative penalty and One Thousand Seven Hundred Ninety-Two Dollars (\$1,792) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent 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 October 23, 2007, the Respondent submitted an application to obtain authorization to discharge wastewater under a new Texas Pollutant Discharge Elimination System ("TPDES") permit.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to maintain authorization for the discharge of wastewater, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2), as documented during an investigation conducted on August 20, 2007. Specifically, the Respondent did not renew TPDES Permit No. 13983001, which expired on March 1, 2007, and is continuing to discharge wastewater from the Facility without authorization.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: Restaurant Service, L.L.C., Docket No. 2007-1614-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 the Respondent 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 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 13983001;
 - b. 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
 - c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance 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 photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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
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 the Respondent. The Respondent 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 the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Dear Sir,

Reference is made to your letter of the 10th inst.

concerning the above-mentioned matter.

The enclosed documents are being forwarded to you for your information.

Very truly yours,

Yours faithfully,

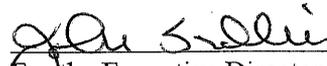
Very truly yours,

Very truly yours,

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

2/25/2008

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 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 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

12-3-07

Date

HARRIS J. PAPPAS

Name (Printed or typed)
Authorized Representative of
Restaurant Service, L.L.C.

PARTNER

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.

