

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2007-1849-MWD-E **TCEQ ID:** RN102080199 **CASE NO.:** 34926**RESPONDENT NAME:** Shirley Creek Marina, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Shirley Creek Park, on the north shore of Sam Rayburn Reservoir and approximately 26 miles southeast of Nacogdoches, Nacogdoches County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 30, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Merrilee Hupp, Enforcement Division, Enforcement Team I, MC 169, (512) 239-4490; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Ms. Hughleen Preslar, President, Shirley Creek Marina, Inc., 23177 Farm-to-Market Road 226, Etoile, Texas 75944  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 18, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 2, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>1) Failure to comply with permitted effluent limitations for total suspended solids, chlorine residual, and biochemical oxygen demand [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121, and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10947001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2].</p> <p>2) Failure to submit the annual sludge report for the monitoring period ending July 31, 2006 by September 1, 2006 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 10947001, Sludge Provisions].</p> <p>3) Failure to timely submit the Discharge Monitoring Reports ("DMRs") for the monitoring periods ending December 31, 2006, February 28, 2007, April 30, 2007, and May 31, 2007 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 10947001, Monitoring and Reporting Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$13,338</p> <p><b>Total Deferred:</b> \$2,668  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$520 (remaining \$10,150 due in 35 monthly payments of \$290 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on November 13, 2007, the Respondent submitted the DMRs for the monitoring periods ending December 31, 2006, February 28, 2007, April 30, 2007, and May 31, 2007.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit the annual sludge report for the monitoring period ending July 31, 2006; and</p> <p>b. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 10947001. The certification shall include detailed supporting documentation including receipts, and /or other records to demonstrate compliance.</p>

Additional ID No(s): TPDES Permit No. 10947001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

<b>DATES</b>	Assigned	5-Nov-2007	Screening	7-Nov-2007	EPA Due	
	PCW	12-Nov-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Shirley Creek Marina, Inc.
Reg. Ent. Ref. No.	RN102080199
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	34926	No. of Violations	3	
Docket No.	2007-1849-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp	
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**  Enhancement **Subtotals 2, 3, & 7**

Notes:

**Culpability**   Enhancement **Subtotal 4**

Notes:

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes:

**Total EB Amounts**   Enhancement\* **Subtotal 6**   
 \*Capped at the Total EB \$ Amount  
**Approx. Cost of Compliance**

**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**  Reduction **Adjustment**

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

Notes:

**PAYABLE PENALTY**

Screening Date 7-Nov-2007

Docket No. 2007-1849-MWD-E

PCW

Respondent Shirley Creek Marina, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34926

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102080199

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

### 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)	26	130%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments 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) 152%

>> 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 25 effluent violations, received one NOV for same or similar violations, received one NOV without same or similar violations, and was issued one Agreed Order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 152%

Screening Date 7-Nov-2007

Docket No. 2007-1849-MWD-E

PCW

Respondent Shirley Creek Marina, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34926

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102080199

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121, and TPDES Permit No. 10947001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2

Violation Description Failed to comply with permitted effluent limitations as shown in the Effluent Violation Table attached.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine the impact of the pollutants on human health or environmental factors. Total suspended solid concentrations and chlorine residual levels were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants that do not exceed levels that are protective of human health and the environment.

Adjustment

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

Four quarterly events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** Shirley Creek Marina, Inc.  
**Case ID No.** 34926  
**Reg. Ent. Reference No.** RN102080199  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				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)	\$2,000	31-Jul-2006	30-Jun-2008	1.9	\$192	n/a	\$192

Notes for DELAYED costs

Estimated cost for the additional monitoring required to determine the cause and resolution of the effluent excursions. Date required is the first documented month of effluent excursions within the review period, and final date is when compliance is expected to be achieved.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$192

Screening Date 7-Nov-2007

Docket No. 2007-1849-MWD-E

PCW

Respondent Shirley Creek Marina, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34926

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102080199

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. 10947001, Sludge Provisions

Violation Description Failed to submit the annual sludge report for the monitoring period ending July 31, 2006 by September 1, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100 percent of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 432 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$2,470

This violation Final Assessed Penalty (adjusted for limits) \$2,470

## Economic Benefit Worksheet

**Respondent** Shirley Creek Marina, Inc.  
**Case ID No.** 34926  
**Reg. Ent. Reference No.** RN102080199  
**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
<small>No commas or \$</small>							

### 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)	\$200	1-Sep-2006	31-May-2008	1.7	\$17	n/a	\$17

Notes for DELAYED costs

Estimated cost for administrative costs associated with the completion and submittal of the annual sludge report. Date required is the due date for the report and final date is the date the report is expected to be received by the TCEQ.

### 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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$17

Screening Date 7-Nov-2007

Docket No. 2007-1849-MWD-E

PCW

Respondent Shirley Creek Marina, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34926

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102080199

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. 10947001, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to timely submit the discharge monitoring report ("DMR") for the monitoring periods ending December 31, 2006, February 28, 2007, April 30, 2007, and May 31, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

70% of the requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 4

848 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$400

Four single events (one per DMR) are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$988

This violation Final Assessed Penalty (adjusted for limits) \$988

## Economic Benefit Worksheet

**Respondent** Shirley Creek Marina, Inc.  
**Case ID No.** 34926  
**Reg. Ent. Reference No.** RN102080199  
**Media** Water Quality  
**Violation No.** 3

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)	\$200	20-Jan-2007	13-Nov-2007	0.8	\$8	n/a	\$8

**Notes for DELAYED costs** Estimated cost for the submittal of four DMRs. Date required is the due date for the first of the four DMRs and the final date is the date the DMRs were received by TCEQ.

### 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

**Notes for AVOIDED costs**

Approx. Cost of Compliance	\$200	<b>TOTAL</b>	\$8
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Effluent Violation Table  
 Shirley Creek Marina, Inc.  
 Docket No. 2007-1849-MWD-E  
 RN102080199

Date	TSS Daily Avg. Conc.	Minimum Chlorine Residual	BOD Daily Avg. Conc.	BOD Single Grab Conc.
<i>Permit Limit:</i>	15 mg/L	1.0 mg/L	10 mg/L	35 mg/L
7/31/2006	18.25	c	27.2075	70
10/31/2006	c	0.9	c	c
11/30/2007	c	c	20.79	45.8
1/31/2007	c	c	20.62	40.5
3/31/2007	c	c	10.97	c
6/30/07	c	c	10.433	c

tss: total suspended solids    conc.: concentration    c: compliant  
 mg/L: milligrams per liter    avg: average    BOD: biochemical oxygen demand (5-day)



## Compliance History

Customer/Respondent/Owner-Operator: CN601122286 Shirley Creek Marina, Inc. Classification: AVERAGE Rating: 2.37  
Regulated Entity: RN102080199 SHIRLEY CREEK PARK Classification: AVERAGE Site Rating: 2.37  
ID Number(s): WASTEWATER PERMIT WQ0010947001  
WASTEWATER PERMIT TPDES0054224  
WASTEWATER PERMIT TX0054224  
WASTEWATER LICENSING LICENSE WQ0010947001  
Location: in Shirley Creek Park on N. shore of Sam Rayburn Reservoir,  
approx. 26 mi. SE of Nacogdoches, Nacogdoches Co. Rating Date: 9/1/2007  
Repeat Violator: NO  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: November 07, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 07, 2002 to November 07, 2007  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Merrilee G. Hupp Phone: 512-239-4490

### 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.

Effective Date: 05/23/2005 ADMINORDER 2004-1051-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: failed to comply with permitted effluent limitations for Five-Day Biochemical Oxygen Demand ("BOD5"), Total Suspended Solids ("TSS"), and Chlorine as detailed in the chart

- 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 12/12/2002 (186178)
- 2 12/12/2002 (186175)
- 3 12/18/2002 (186181)
- 4 01/31/2003 (186185)
- 5 03/03/2003 (186152)
- 6 04/07/2003 (186156)
- 7 07/02/2003 (307316)
- 8 07/02/2003 (307317)
- 9 08/20/2003 (307318)
- 10 09/25/2003 (307320)
- 11 10/28/2003 (307321)
- 12 11/24/2003 (307322)
- 13 12/16/2003 (254770)
- 14 01/20/2004 (307323)
- 15 02/23/2004 (262908)

16 03/15/2004 (307313)  
17 04/26/2004 (356822)  
18 05/17/2004 (356823)  
19 06/14/2004 (307314)  
20 06/24/2004 (356824)  
21 07/02/2004 (307319)  
22 07/02/2004 (307324)  
23 07/16/2004 (279276)  
24 07/23/2004 (356825)  
25 07/23/2004 (356826)  
26 08/20/2004 (356827)  
27 09/24/2004 (356828)  
28 10/29/2004 (356829)  
29 11/23/2004 (384495)  
30 12/23/2004 (384496)  
31 01/31/2005 (384497)  
32 04/15/2005 (422439)  
33 05/03/2005 (422440)  
34 05/16/2005 (422441)  
35 06/28/2005 (422442)  
36 08/05/2005 (443385)  
37 08/26/2005 (443386)  
38 09/24/2005 (473195)  
39 11/14/2005 (473196)  
40 12/07/2005 (473197)  
41 01/03/2006 (473198)  
42 02/08/2006 (473199)  
43 03/27/2006 (473194)  
44 05/12/2006 (501401)  
45 06/27/2006 (523650)  
46 08/21/2006 (523651)  
47 08/27/2006 (510221)  
48 09/20/2006 (523652)  
49 10/26/2006 (548614)  
50 11/03/2006 (514412)  
51 11/16/2006 (548615)  
52 12/22/2006 (548616)  
53 02/26/2007 (581792)  
54 04/25/2007 (581793)  
55 07/05/2007 (581794)  
56 11/02/2007 (598407)

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

Date: 12/31/2002 (186185)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2003 (186152)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2003 (307314)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2003 (307316)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2003 (307318)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2003 (307319)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2003 (307320)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 12/16/2003 (254770)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 317 317.4(a)(8)

30 TAC Chapter 317 317.7(i)

Description: Failure by Shirley Creek Marina to have the water connection from the public drinking water supply made through an air gap or double-check backflow preventer, and to have atmospheric vacuum breakers at all potable water washdown hoses.

Self Report? NO Classification: Moderate

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Minor

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Moderate

Rqmt Prov: PERMIT TPDES 10947

Description: Failure by Shirley Creek Marina to discharge effluent within permit limits of 1-4 mg/l for chlorine residual.

Self Report? NO Classification: Moderate

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to discharge effluent in compliance with permit limitations.

Self Report? NO Classification: Minor

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to submit accurate information in a report to the Executive Director.

Self Report? NO Classification: Minor

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to report to the Region 10 office any effluent violations which deviates from the permitted effluent limitations by more than 40% within 5 working days of becoming aware.

Self Report? NO Classification: Minor

Rqmt Prov: PERMIT TPDES 10947-001

Description: Failure by Shirley Creek Marina to maintain records in a reviewable manner and to maintain copies of monitoring and reporting records for 3 years.

Date: 06/30/2004 (356826)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2005 (443385)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2005 (443386)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2005 (473195)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2005 (473196)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2005 (473197)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2005 (473198)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2005 (473199)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2006 (501401)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2006 (473194)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2006 (581794)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2006 (523650)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 07/20/2006 (510221)

Self Report? NO Classification: Minor

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

Rqmt Prov: PERMIT Self-reporting Requirements

Description: Using unapproved self-generated Discharge Monitoring Report (DMR) forms to report monitoring results

Date: 07/31/2006 (523651)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2006 (548615)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006 (548616)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2007 (581792)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2007 (581793)

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2007

Self Report? YES Classification: Moderate

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

TWC Chapter 26 26.121(a)

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  
SHIRLEY CREEK MARINA, INC.  
RN102080199

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2007-1849-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 Shirley Creek Marina, Inc. ("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 wastewater treatment facility located in Shirley Creek Park on the north shore of Sam Rayburn Reservoir and approximately 26 miles southeast of Nacogdoches in Nacogdoches County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 November 7, 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 Thirteen Thousand Three Hundred Thirty-Eight Dollars (\$13,338) is assessed by the Commission in settlement of the violations alleged in Section



II ("Allegations"). The Respondent has paid Five Hundred Twenty Dollars (\$520) of the administrative penalty and Two Thousand Six Hundred Sixty-Eight Dollars (\$2,668) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Ten Thousand One Hundred Fifty Dollars (\$10,150) of the administrative penalty shall be payable in thirty-five monthly payments of Two Hundred Ninety Dollars (\$290) 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 until paid in full. If the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 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 November 13, 2007, the Respondent submitted the Discharge Monitoring Reports ("DMRs") for the monitoring periods ending December 31, 2006, February 28, 2007, April 30, 2007, and May 31, 2007.
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:

1. Failed to comply with permitted effluent limitations, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121, and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 10947001, Effluent Limitations and Monitoring Requirements Nos. 1 and 2, as documented during a record review conducted on October 18, 2007 and shown in the following effluent violation table:



Date	TSS Daily Avg. Conc.	Minimum Chlorine Residual	BOD Daily Avg. Conc.	BOD Single Grab Conc.
<i>Permit Limit:</i>	<i>15 mg/L</i>	<i>1.0 mg/L</i>	<i>10 mg/L</i>	<i>35 mg/L</i>
7/31/2006	18.25	c	27.2075	70
10/31/2006	c	0.9	c	c
11/30/2007	c	c	20.79	45.8
1//31/2007	c	c	20.62	40.5
3/31/2007	c	c	10.97	c
6/30/07	c	c	10.433	c

tss: total suspended solids conc.: concentration c: compliant  
 mg/L: milligrams per liter avg: average BOD: biochemical oxygen demand (5-day)

2. Failed to submit the annual sludge report for the monitoring period ending July 31, 2006 by September 1, 2006, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 10947001, Sludge Provisions, as documented during a record review conducted on October 18, 2007.
3. Failed to timely submit the DMRs for the monitoring periods ending December 31, 2006, February 28, 2007, April 30, 2007, and May 31, 2007, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 10947001, Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on October 18, 2007.

**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: Shirley Creek Marina, Inc., Docket No. 2007-1849-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. Within 30 days after the effective date of this Agreed Order, submit the annual sludge report for the monitoring period ending July 31, 2006 to the addresses in Ordering Provision 2.b, below; and
  - b. Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. 10947001. The certification shall include detailed supporting documentation including receipts, and /or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-308

with a copy to:

Water Section, Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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 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.



Shirley Creek Marina, Inc.  
DOCKET NO. 2007-1849-MWD-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*John Zedler*  
For the Executive Director

*7/18/2008*  
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.

*Hughleen Prastar*  
Signature

*02/01/08*  
Date

*Hughleen Prastar*  
Name (Printed or typed)  
Authorized Representative of  
Shirley Creek Marina, Inc.

*Pres*  
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.

