

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-0704-MWD-E **TCEQ ID:** RN102844834 **CASE NO.:** 37610
RESPONDENT NAME: City of Waller

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Waller, 102 Walnut Street, approximately 4,500 feet southeast of the intersection of United States Highway 290 and Farm-to-Market Road 362, Waller County</p> <p>TYPE OF OPERATION: Domestic wastewater system</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 September 28, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-1460; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Paul A. Wood, Mayor, City of Waller, P.O. Box 239, Waller, Texas 77484 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 25, 2009</p> <p>Date of NOV/NOE Relating to this Case: April 30, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the permit effluent limits for ammonia nitrogen [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010310001, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$1,690</p> <p>Total Deferred: \$338 <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: \$1,352</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>Ordering Provisions:</p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010310001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0010310001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-May-2009	Screening	12-May-2009	EPA Due	
	PCW	12-May-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Waller				
Reg. Ent. Ref. No.	RN102844834				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	37610	No. of Violations	1
Docket No.	2009-0704-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jeremy Escobar
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 3
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 Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts
Approx. Cost of Compliance *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.

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 12-May-2009

Docket No. 2009-0704-MWD-E

PCW

Respondent City of Waller

Policy Revision 2 (September 2002)

Case ID No. 37610

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844834

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	9	45%
	Other written NOV's	2	4%
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%
<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) 69%

>> 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 nine self-reported effluent violations, two NOV's with unrelated violations, and one 1660 order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 69%

Screening Date 12-May-2009	Docket No. 2009-0704-MWD-E	PCW
Respondent City of Waller		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 37610		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN102844834		
Media [Statute] Water Quality		
Enf. Coordinator Jeremy Escobar		
Violation Number	1	
Rule Cite(s)	Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010310001 Effluent Limitations and Monitoring Requirements No. 1	
Violation Description	Failed to comply with the permit effluent limits, as documented in a record review conducted on February 25, 2009. See attached table.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				X
	Potential			Percent	10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor		
					Percent	0%

Matrix Notes
 A simplified model was used to evaluate ammonia-nitrogen to determine whether the discharged amounts of pollutants exceeded protective levels. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

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 City of Waller
Case ID No. 37610
Reg. Ent. Reference No. RN102844834
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	30-Sep-2008	30-Mar-2010	1.50	\$748	n/a	\$748

Notes for DELAYED costs

Estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater system. Date required is the first date of non-compliance. 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$748

Effluent Violation Table
 City of Waller
 Docket No. 2009-0704-MWD-E
 WQ0010310001

Permitted Effluent Limits	NH3-N Daily Average Concentration 2.0 mg/L	NH3-N Daily Maximum Concentration 12 mg/L	NH3-N Daily Average Loading 15 lbs/day
September 2008	11.275	19.4	24.18
October 2008	16.5	18.6	36.2
November 2008	9.1	20.4	19.18

NH3-N = Total Ammonia Nitrogen	C = compliant	mg/L = milligrams per Liter
Lbs/day = Pounds Per Day		

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600342562	City of Waller	Classification: AVERAGE	Rating: 2.48
Regulated Entity:	RN102844834	CITY OF WALLER	Classification: AVERAGE	Site Rating: 1.43
ID Number(s):	WASTEWATER	PERMIT		WQ0010310001
	WASTEWATER	PERMIT		TPDES0032476
	WASTEWATER	PERMIT		TX0032476
	WASTEWATER LICENSING	LICENSE		WQ0010310001
Location:	102 Walnut Street, approximately 4,500 feet southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 362 in Waller County, Texas			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 21, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 12, 2004 to May 12, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jeremy Escobar	Phone:	239 - 1460	

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
- | | | |
|-----------------|--|----------------------------|
| Effective Date: | 10/10/2005 | ADMINORDER 2004-1798-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: | EL&MR, Nos. 1 and 2 PERMIT | |
| Description: | Failure to comply with-permit effluent limits. | |
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|----|------------|----------|
| 1 | 07/06/2004 | (355580) |
| 2 | 07/08/2004 | (303894) |
| 3 | 10/05/2004 | (355581) |
| 4 | 10/05/2004 | (355582) |
| 5 | 10/05/2004 | (355583) |
| 6 | 10/25/2004 | (355584) |
| 7 | 10/27/2004 | (336738) |
| 8 | 11/03/2004 | (334731) |
| 9 | 11/19/2004 | (341678) |
| 10 | 11/24/2004 | (383775) |
| 11 | 01/27/2005 | (383776) |
| 12 | 01/27/2005 | (383777) |
| 13 | 02/21/2005 | (383774) |
| 14 | 03/28/2005 | (421701) |
| 15 | 05/16/2005 | (421702) |
| 16 | 05/16/2005 | (421703) |
| 17 | 06/21/2005 | (421704) |
| 18 | 07/20/2005 | (442623) |
| 19 | 09/09/2005 | (442624) |
| 20 | 09/12/2005 | (442625) |

21	10/17/2005	(471816)
22	11/17/2005	(471817)
23	12/19/2005	(471818)
24	01/17/2006	(471819)
25	02/27/2006	(471814)
26	03/13/2006	(471815)
27	04/28/2006	(500327)
28	06/07/2006	(500328)
29	07/10/2006	(522430)
30	07/10/2006	(522431)
31	08/11/2006	(522432)
32	09/21/2006	(522433)
33	10/20/2006	(547126)
34	11/20/2006	(547127)
35	12/14/2006	(547128)
36	01/19/2007	(579630)
37	02/15/2007	(579625)
38	03/21/2007	(579626)
39	04/23/2007	(579627)
40	05/23/2007	(579628)
41	06/25/2007	(579629)
42	06/26/2007	(559923)
43	07/23/2007	(602894)
44	08/15/2007	(602895)
45	09/19/2007	(602896)
46	10/15/2007	(621277)
47	11/19/2007	(621278)
48	12/27/2007	(621279)
49	01/10/2008	(673341)
50	02/15/2008	(673340)
51	03/17/2008	(695329)
52	03/17/2008	(691514)
53	04/14/2008	(691515)
54	05/15/2008	(691516)
55	06/23/2008	(691517)
56	07/22/2008	(712455)
57	09/02/2008	(712456)
58	09/25/2008	(712457)
59	10/22/2008	(728700)
60	11/24/2008	(728701)
61	12/04/2008	(709426)
62	12/22/2008	(728702)
63	04/30/2009	(736787)

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

Date: 05/31/2004 (355580) CN600342562
 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: 09/30/2004 (355584) CN600342562
 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: 10/29/2004 (334731) CN600342562
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 317 317.4(a)(8)
 Description: Failure to install atmospheric vacuum breakers on the potable-water hose bibs.

Date: 12/31/2004 (383777) CN600342562
 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:	01/31/2005 (383774)	CN600342562	
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 (442625)	CN600342562	
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:	08/31/2006 (522433)	CN600342562	
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:	06/26/2007 (559923)	CN600342562	
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.4(d)		
Description:	Failure to properly operate and maintain the clarifiers.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Operational Requirements, No. 1. OP		
Description:	Failure to properly maintain the staff gauge.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a) 30 TAC Chapter 319, SubChapter A 319.7(c)		
Description:	Failure to properly conduct the pH meter calibration.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 317 317.4(a)(8) 30 TAC Chapter 317 317.7(i)		
Description:	Failure to conduct the annual backflow prevention device certification on the potable water line into the wastewater treatment plant.		
Date:	09/30/2008 (728700)	CN600342562	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2008 (728701)	CN600342562	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2008 (728702)	CN600342562	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

F. Environmental audits.

G. Type of environmental management systems (EMSs).

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF WALLER
RN102844834

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

AGREED ORDER
DOCKET NO. 2009-0704-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 City of Waller ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a domestic wastewater treatment facility at 102 Walnut Street, approximately 4,500 feet southeast of the intersection of United States Highway 290 and Farm-to-Market Road 362 in Waller County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about May 5, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Six Hundred Ninety Dollars (\$1,690) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid One Thousand Three Hundred Fifty-Two Dollars (\$1,352) of

the administrative penalty and Three Hundred Thirty-Eight Dollars (\$338) is deferred contingent upon the City'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 City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City 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 City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with the permit effluent limits, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010310001 Effluent Limitations and Monitoring Requirements No. 1, as documented in a record review conducted on February 25, 2009, and shown in the table below:

Effluent Violation Table			
Permitted Effluent Limits	NH3-N Daily Average Concentration 2.0 mg/L	NH3-N Daily Maximum Concentration 12 mg/L	NH3-N Daily Average Loading 15 lbs/day
September 2008	11.275	19.4	24.18
October 2008	16.5	18.6	36.2
November 2008	9.1	20.4	19.18

NH3-N = Total Ammonia Nitrogen	C = compliant	mg/L = milligrams per Liter
Lbs/day = Pounds Per Day		

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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: City of Waller, Docket No. 2009-0704-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 City shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010310001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water 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 City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City 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 City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, 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 Bradley
For the Executive Director

9/3/2009
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.

Paul A Wood
Signature

July 20, 2009
Date

Paul A Wood
Name (Printed or typed)
Authorized Representative of
City of Waller

Mayor
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.

