

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1639-MWD-E **TCEQ ID:** RN102844610 **CASE NO.:** 36662

RESPONDENT NAME: City of Elkhart

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 Elkhart WWTP, located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319, and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861, Anderson County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</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 January 19, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Joe B. Burris, Mayor, City of Elkhart, P.O. Box 944, Elkhart, Texas 75839 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: September 3, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 2, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permit effluent limits for total suspended solids, dissolved oxygen, and flow [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6].</p>	<p>Total Assessed: \$8,720</p> <p>Total Deferred: \$1,744 <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: \$6,976</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. WQ0010735001, 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): WQ0010735001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	6-Oct-2008			
	PCW	10-Oct-2008	Screening	10-Oct-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Elkhart
Reg. Ent. Ref. No.	RN102844610
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36662	No. of Violations	1
Docket No.	2008-1639-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	

Compliance History	138.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$5,520
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Notes: The Respondent self-reported 21 months of effluent quality violations, and was issued four Notices of Violations for violations considered not to be same or similar and was issued one Agreed Order without the denial of liability language.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$0
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts \$5,007
 Approx. Cost of Compliance \$50,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$9,520
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-8.4%	<i>Adjustment</i>	-\$800
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction to the prevent the self-reported violations from overly impacting the penalty.

Final Penalty Amount	\$8,720
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$8,720
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$1,744
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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	\$6,976
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Screening Date 10-Oct-2008

Docket No. 2008-1639-MWD-E

PCW

Respondent City of Elkhart

Policy Revision 2 (September 2002)

Case ID No. 36662

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102844610

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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)	21	105%
	Other written NOVs	4	8%
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	1	25%
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) 138%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent self-reported 21 months of effluent quality violations, and was issued four Notices of Violations for violations considered not to be same or similar and was issued one Agreed Order without the denial of liability language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 138%

Screening Date 10-Oct-2008	Docket No. 2008-1639-MWD-E	PCW		
Respondent City of Elkhart	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36662	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN102844610				
Media [Statute] Water Quality				
Enf. Coordinator Heather Brister				
Violation Number 1				
Rule Cite(s)	Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6			
Violation Description	Failed to comply with permit effluent limits, as documented during a record review conducted on September 3, 2008. See attached table.			
Base Penalty		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	10%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	0%	
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		4	Number of violation days	
		275		
mark only one with an x	daily	<input type="checkbox"/>	Violation Base Penalty	
	monthly	<input type="checkbox"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
single event	<input type="checkbox"/>	\$4,000		
Four quarterly events are recommended.				
Good Faith Efforts to Comply		0.0% Reduction		
		\$0		
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	<input checked="" type="checkbox"/>	(mark with x)		
Notes	The Respondent does not meet the good-faith criteria for this violation.			
Violation Subtotal		\$4,000		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$5,007	Violation Final Penalty Total	\$8,720	
		This violation Final Assessed Penalty (adjusted for limits)		
		\$8,720		

Economic Benefit Worksheet

Respondent: City of Elkhart
 Case ID/No: 36662
 Reg. Ent. Reference No: RN102844610
 Media: Water Quality
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No. commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$50,000	30-Jun-2007	30-Jun-2009	2.00	\$5,007	n/a	\$5,007

Notes for DELAYED costs

The estimated cost to investigate the source of inflow and infiltration and to hire an engineer to make necessary modifications. The Date Required is the date of first noncompliance, and the Final date is the anticipated 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

\$50,000

TOTAL

\$5,007

Effluent Limit Violation Table

table rev.

Respondent	City of Elkhart		
ID Number(s)	WQ0010735001		
Docket Number	2008-1639-MWD-E		
Enf. Coordinator	Heather Brister		

Corresponds to Violation Number: 1

EFFLUENT PARAMETER				
	Permit Limit			
	Dissolved Oxygen Minimum 6.0 Milligrams per Liter	Total Suspended Solids Daily Average Loading 26 Pounds per Day	Total Suspended Solids Daily Average Concentration 10 Milligrams per Liter	Daily Average Flow 0.210 Million Gallons per Day
Month/Year				
Jun-07	5.30	c	10.30	c
Jul-07	5.40	c	c	0.262
Aug-07	5.80	c	c	c
Sep-07	5.90	c	c	c
Oct-07	5.70	c	c	c
Nov-07	5.50	c	21.90	c
Dec-07	c	c	13.00	c
Mar-08	4.70	35.50	14.00	c
Apr-08	5.80	c	c	c

c - compliant

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600737738	City of Elkhart	Classification: AVERAGE	Rating: 6.33
Regulated Entity:	RN102844610	CITY OF ELKHART WWTP	Classification: AVERAGE	Site Rating: 12.99
ID Number(s):	WASTEWATER		PERMIT	WQ0010735001
	WASTEWATER		PERMIT	TPDES0022578
	WASTEWATER		PERMIT	TX0022578
	WASTEWATER LICENSING		LICENSE	WQ0010735001
Location:	Located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas			Rating Date: 9/1/2008 Repeat Violator: NO

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: October 09, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 09, 2003 to October 09, 2008

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

Name: Heather Brister Phone: 254/761-3034

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 2004-0673-MWD-E

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)

30 TAC Chapter 305, SubChapter F 305.125(11)(C)

Description: Failure to complete and submit an annual sludge report.

Classification: Moderate

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

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain sludge disposal records.

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to properly operate and maintain manual bar screens.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to properly operate the aeration basin.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to comply with the permitted effluent single grab BOD5 limitation of 35 mg/L and failed to comply with the permitted effluent limitation of 60 mg/L for TSS.

Classification: Moderate

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

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain a chlorine residual between 1.0 mg/L-4.0 mg/L.

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)

Rqmt Prov: 3.b PERMIT

Description: Failure to analyze chlorine at the permitted measurement frequency.

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain required sampling records.

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.6

30 TAC Chapter 319, SubChapter A 319.9(b)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain quality assurance quality control records for chlorine analysis.

Classification: Moderate

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

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain required process control records.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 317 317.3

Description: Failure to properly secure lift stations.

Classification: Moderate

Citation: 30 TAC Chapter 317 317.3(b)(1)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to provide standby pumps to lift stations which handle wastes from two or more residential housing units or from any public establishments.

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(d)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to submit DMRs for the months of November 2002 through August 2003.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: Operational Requirements, Provision 1 PERMIT

Description: Failed to prevent an unauthorized discharge of wastewater or any other waste. Specifically, sludge was bulking over the clarifier weirs passing through the chlorine contact chamber and being discharged into the receiving stream.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	04/16/2004	(257004)
2	07/07/2004	(353341)
3	07/07/2004	(353342)
4	07/07/2004	(353343)
5	07/23/2004	(353344)
6	08/30/2004	(353345)
7	09/20/2004	(353346)
8	10/15/2004	(353347)
9	11/12/2004	(382531)
10	11/12/2004	(382533)
11	11/12/2004	(382534)
12	11/12/2004	(382535)
13	11/12/2004	(382536)
14	11/12/2004	(382537)
15	11/12/2004	(382538)
16	11/12/2004	(382539)
17	11/12/2004	(382540)
18	11/12/2004	(382541)
19	11/12/2004	(382543)
20	11/12/2004	(382545)
21	11/17/2004	(337183)
22	11/22/2004	(382542)
23	12/20/2004	(382544)
24	01/21/2005	(382546)
25	02/24/2005	(420379)
26	03/18/2005	(382532)
27	04/15/2005	(420380)
28	05/23/2005	(420381)
29	06/29/2005	(420382)
30	07/14/2005	(399989)
31	07/18/2005	(441434)
32	08/22/2005	(441435)
33	09/14/2005	(431953)
34	09/22/2005	(441436)
35	10/24/2005	(469632)
36	11/21/2005	(436975)
37	11/21/2005	(469633)
38	12/27/2005	(469634)
39	01/23/2006	(469635)
40	02/21/2006	(469630)
41	03/27/2006	(469631)
42	04/20/2006	(498975)
43	05/15/2006	(498976)
44	06/19/2006	(498977)
45	07/24/2006	(521016)
46	08/14/2006	(521017)
47	09/20/2006	(521018)
48	10/16/2006	(577039)
49	11/27/2006	(577040)
50	12/15/2006	(577041)
51	01/23/2007	(577042)
52	02/23/2007	(577034)
53	03/23/2007	(577035)
54	04/19/2007	(577036)
55	05/25/2007	(577037)
56	06/14/2007	(577038)
57	08/06/2007	(602067)

58 08/24/2007 (566653)
 59 08/28/2007 (602068)
 60 09/21/2007 (602069)
 61 10/22/2007 (620105)
 62 11/21/2007 (620106)
 63 12/20/2007 (620107)
 64 01/21/2008 (672521)
 65 02/29/2008 (690473)
 66 03/21/2008 (672520)
 67 04/21/2008 (690474)
 68 05/22/2008 (690475)
 69 10/02/2008 (701932)

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

Date: **11/30/2003** (382543)
 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: **3/31/2003** (353341)
 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** (337183)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 319, SubChapter C 319.302(b)(3)
 Description: Failure to notify local media of a wastewater bypass of 100,000 gallons or greater.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to notify the TCEQ within 24 hours of becoming aware of a wastewater bypass.

Date: **11/30/2004** (382544)
 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: **02/28/2005** (382532)
 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: **11/21/2005** (436975)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(g)
 Description: Failure to properly operate and maintain the aerated lagoon.

Date: **11/30/2005** (469634)
 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:	03/31/2006	(498975)		
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	(498976)		
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:	06/30/2006	(521016)		
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	(577041)		
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	(577036)		
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:	04/30/2007	(577037)		
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:	05/31/2007	(577038)		
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	(602067)		
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:	07/31/2007	(602068)		
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: 08/30/2007 (566653)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: PERMIT OPERATIONAL REQUIREMENTS
Description: Failure to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(b)(6)
Rqmt Prov: PERMIT PERMIT CONDITIONS
Description: Failure to accurately describe and/or include all treatment units used in the treatment process, in the permit renewal application received by the TCEQ on June 9, 2006.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)
30 TAC Chapter 305, SubChapter F 305.125(11)(C)
Rqmt Prov: PERMIT SLUDGE PROVISIONS
Description: Failure to accurately complete the Annual Sludge Discharge Monitoring Report submitted to the TCEQ for the period ending July 31, 2005.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)
Rqmt Prov: PERMIT MONITORING AND REPORTING REQUIREMENTS
Description: Failure to provide, to the Tyler Region Office, oral notification within 24 hours of becoming aware of a noncompliance and failed to submit written submission containing a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and steps taken to its adverse effects.

Date: 08/31/2007 (602069)
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: 09/30/2007 (620105)
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: 10/31/2007 (620106)
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: 11/30/2007 (620107)
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: 12/31/2007 (672521)
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: 03/31/2008 (690474)
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: 04/30/2008 (690475)
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: 07/03/2008 (684634)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 291, SubChapter F 291.94(a)
Description: Failure to properly maintain the collection system as specified in 30 TAC§291.94(a).

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
CITY OF ELKHART
RN102844610**

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

AGREED ORDER DOCKET NO. 2008-1639-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 Elkhart ("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 wastewater treatment plant located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas (the "Facility").
2. The City has discharged 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 October 7, 2008.
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 Eight Thousand Seven Hundred Twenty Dollars (\$8,720) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Six Thousand Nine Hundred Seventy-Six Dollars (\$6,976) of the administrative penalty and One Thousand Seven Hundred Forty-Four Dollars (\$1,744) 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 permit effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6, as documented during a record review conducted on September 3, 2008, and as shown in the following table:

EFFLUENT PARAMETER				
Permit Limit				
	Dissolved Oxygen Minimum 6.0 Milligrams per Liter	Total Suspended Solids Daily Average Loading 26 Pounds per Day	Total Suspended Solids Daily Average Concentration 10 Milligrams per Liter	Daily Average Flow 0.210 Million Gallons per Day
Month/Year				
Jun-07	5.30	c	10.30	c
Jul-07	5.40	c	c	0.262
Aug-07	5.80	c	c	c
Sep-07	5.90	c	c	c
Oct-07	5.70	c	c	c
Nov-07	5.50	c	21.90	c
Dec-07	c	c	13.00	c
Mar-08	4.70	35.50	14.00	c
Apr-08	5.80	c	c	c

c - compliant

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 Elkhart, Docket No. 2008-1639-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. WQ0010735001, 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 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

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.

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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 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



For the Executive Director

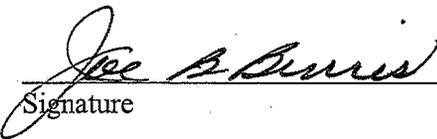
11/9/2009
Date

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.



Signature

11/05/2008
Date

Joe B. Burris
Name (Printed or typed)
Authorized Representative of
City of Elkhart

Mayor for City of Elkhart, TX
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.

