

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1289-MWD-E **TCEQ ID:** RN101919769 **CASE NO.:** 36339

**RESPONDENT NAME:** City of Magnolia

<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> City of Magnolia Wastewater Treatment Facility, located at the northeast corner of the intersection of Arnold Branch and Nichols Sawmill Road, approximately 1.5 miles south of the intersection of Farm-to-Market Road 1774 and Farm-to-Market Road 1488, Montgomery County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" 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 March 2, 2009. 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. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> The Honorable J. W. Thornton, Mayor, City of Magnolia, P.O. Box 396, Magnolia, Texas 77353  <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 checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input 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> May 22, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 22, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failure to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11871001 and is continuing to discharge wastewater from the Facility without authorization [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1)].</p>	<p><b>Total Assessed:</b> \$8,520</p> <p><b>Total Deferred:</b> \$1,704  <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 to General Revenue:</b> \$6,816</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 July 1, 2008, the Respondent submitted an administratively complete permit application.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 11871001;</p> <p>b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): TX0072702, WQ0011871001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	29-Jul-2008	<b>Screening</b>	7-Aug-2008	<b>EPA Due</b>	
	<b>PCW</b>	13-Aug-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Magnolia
<b>Reg. Ent. Ref. No.</b>	RN101919769
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36339	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-1289-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Lanae Foard
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$6,000
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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.

<b>Compliance History</b>	42.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$2,520
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**Notes**  
An enhancement is recommended due to eleven non-similar NOVs and one agreed order with denial.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$718  
Approx. Cost of Compliance \$10,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,520
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$8,520

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,520
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,704
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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.

<b>PAYABLE PENALTY</b>	\$6,816
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**Screening Date** 7-Aug-2008  
**Respondent** City of Magnolia  
**Case ID No.** 36339  
**Reg. Ent. Reference No.** RN101919769  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Lanae Foard

**Docket No.** 2008-1289-MWD-E

**PCW**

Policy Revision 2 (September 2002)  
 PCW Revision, June 12, 2008

**Compliance History Worksheet**

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	11	22%
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)** 42%

>> **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**

An enhancement is recommended due to eleven non-similar NOVs and one agreed order with denial.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 42%

<p><b>Screening Date</b> 7-Aug-2008  <b>Respondent</b> City of Magnolia  <b>Case ID No.</b> 36339  <b>Reg. Ent. Reference No.</b> RN101919769  <b>Media [Statute]</b> Water Quality  <b>Enf. Coordinator</b> Lanae Foard  <b>Violation Number</b> <input type="text" value="1"/>  <b>Rule Cite(s)</b> 30 Tex. Admin. Code §§ 305.65 and 305.125(2) and Tex. Water Code § 26.121(a)(1)  <b>Violation Description</b> Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11871001 and is continuing to discharge wastewater from the Facility without authorization.</p>	<p><b>Docket No.</b> 2008-1289-MWD-E  <b>PCW</b>  <i>Policy Revision 2 (September 2002)</i>  <i>PCW Revision June 12, 2008</i></p>																						
<b>Base Penalty</b> <input type="text" value="\$10,000"/>																							
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																							
<p><b>OR</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:15%; text-align: center;"><b>Release</b></td> <td style="width:15%; text-align: center;"><b>Major</b></td> <td style="width:15%; text-align: center;"><b>Harm</b></td> <td style="width:15%; text-align: center;"><b>Moderate</b></td> <td style="width:15%; text-align: center;"><b>Minor</b></td> <td style="width:15%;"></td> </tr> <tr> <td></td> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td></td> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>		<b>Release</b>	<b>Major</b>	<b>Harm</b>	<b>Moderate</b>	<b>Minor</b>			Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>			
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<b>&gt;&gt; Programmatic Matrix</b>																							
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<input type="text" value="\$1,000"/>																							
<b>Violation Events</b>																							
<p>Number of Violation Events <input type="text" value="6"/>      <input type="text" value="159"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:15%; text-align: center;">daily</td> <td style="width:15%; text-align: center;"><input type="text"/></td> <td style="width:15%;"></td> <td style="width:15%;"></td> </tr> <tr> <td rowspan="5" style="vertical-align: middle;"><i>mark only one with an x</i></td> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td rowspan="5" style="vertical-align: middle;"><b>Violation Base Penalty</b> <input type="text" value="\$6,000"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> <p style="text-align: center; border: 1px solid black; padding: 5px;">Six monthly events are recommended from the permit expiration date (March 1, 2008) to the screening date (August 7, 2008).</p>		daily	<input type="text"/>			<i>mark only one with an x</i>	monthly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Violation Base Penalty</b> <input type="text" value="\$6,000"/>	quarterly	<input type="checkbox"/>	<input type="checkbox"/>	semiannual	<input type="checkbox"/>	<input type="checkbox"/>	annual	<input type="checkbox"/>	<input type="checkbox"/>	single event	<input type="checkbox"/>	<input type="checkbox"/>	
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<b>Good Faith Efforts to Comply</b> <input type="text" value="0.0%"/> Reduction <input type="text" value="\$0"/>																							
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		<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>																				
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Notes</b> <input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>																			
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>																				
N/A	<input checked="" type="checkbox"/>	(mark with x)																					
<b>Economic Benefit (EB) for this violation</b> <input type="text" value="\$718"/>																							
<b>Statutory Limit Test</b> <input type="text" value="\$8,520"/>																							
<b>Violation Final Penalty Total</b> <input type="text" value="\$8,520"/>																							
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$8,520"/>																							

### Economic Benefit Worksheet

**Respondent** City of Magnolia  
**Case ID No.** 36339  
**Reg. Ent. Reference No.** RN101919769  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

Equipment				0.00	\$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	\$10,000	1-Mar-2008	7-Aug-2009	1.44	\$718	n/a	\$718
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

\$718

# Compliance History

Customer/Respondent/Owner-Operator:	CN600636856	City of Magnolia	Classification: AVERAGE	Rating: 2.54
Regulated Entity:	RN101919769	CITY OF MAGNOLIA WASTEWATER TREATMENT FACILITY	Classification: AVERAGE	Site Rating: 1.60
ID Number(s):	WASTEWATER	PERMIT		TPDES0072702
	WASTEWATER	PERMIT		TX0072702
	WASTEWATER	PERMIT		WQ0014903001
	WASTEWATER LICENSING	LICENSE		WQ0011871001
Location:	NE CORNER OF THE INTERSECTION OF ARNOLD BRANCH AND NICHOLS SAWMILL RD APPROX 1.5 MI S OF THE INTERSECTION OF FM 1774 AND FM 1488, MONTGOMERY CO, TEXAS			Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	August 06, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 06, 2003 to August 06, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Lanae Foard	Phone:	512-239-2554	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A	Effective Date: 07/15/2005	ADMINORDER 2003-1295-MWD-E
	Classification: Moderate	
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with the permit limit for Total Ammonia Nitrogen daily average (mg/l) at Outfall 001A for the monitoring periods ending 11/30/2001 and 02/28/2002. These violations meet referral criteria.

- 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	08/22/2003	(312710)
2	09/12/2003	(312711)
3	10/22/2003	(312712)
4	10/30/2003	(253826)
5	11/14/2003	(312713)
6	12/19/2003	(312714)
7	01/16/2004	(312715)
8	02/20/2004	(312703)
9	03/15/2004	(312704)
10	04/19/2004	(312705)
11	05/19/2004	(359167)
12	06/17/2004	(312709)
13	09/03/2004	(359168)
14	09/23/2004	(359169)
15	10/25/2004	(359170)
16	11/10/2004	(385805)
17	12/09/2004	(385806)
18	01/13/2005	(385807)
19	02/28/2005	(385804)
20	03/24/2005	(348623)
21	04/06/2005	(444542)

22 06/09/2005 (444541)  
 23 07/31/2005 (444543)  
 24 09/29/2005 (444544)  
 25 10/26/2005 (475229)  
 26 11/29/2005 (475230)  
 27 01/04/2006 (475231)  
 28 01/25/2006 (452575)  
 29 02/03/2006 (475232)  
 30 02/22/2006 (475227)  
 31 03/24/2006 (475228)  
 32 03/28/2006 (459829)  
 33 04/24/2006 (502755)  
 34 05/22/2006 (502756)  
 35 06/13/2006 (502757)  
 36 07/13/2006 (502758)  
 37 08/16/2006 (525089)  
 38 09/13/2006 (525090)  
 39 10/12/2006 (525091)  
 40 11/15/2006 (584423)  
 41 12/13/2006 (584424)  
 42 01/11/2007 (584425)  
 43 02/13/2007 (584417)  
 44 03/14/2007 (584418)  
 45 04/15/2007 (584419)  
 46 05/15/2007 (584420)  
 47 06/12/2007 (584421)  
 48 07/12/2007 (562156)  
 49 07/14/2007 (584422)  
 50 08/15/2007 (604250)  
 51 09/13/2007 (604251)  
 52 10/17/2007 (604252)  
 53 11/15/2007 (623248)  
 54 12/20/2007 (623249)  
 55 01/20/2008 (623250)  
 56 02/20/2008 (674601)  
 57 03/12/2008 (638359)  
 58 03/17/2008 (674602)  
 59 04/16/2008 (674603)  
 60 07/21/2008 (685936)

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

Date: 10/31/2003 (312713)  
 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: 02/29/2004 (312704)  
 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: 03/31/2004 (312705)  
 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: 04/30/2004 (359167)  
 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: 05/30/2004 (444542)  
 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: 06/30/2004 (312709)  
 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: 08/31/2004 (359169)  
 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: 03/28/2005 (348623)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
Description: Failure to maintain the clarifier weirs.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to comply with the permit limits for chlorine.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to comply with the permit limits for total suspended solids (TSS), dissolved oxygen (D.O.), pH, and chlorine.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to maintain compliance with the permitted flow limits.  
Date: 06/30/2005 (444543)  
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 (475232)  
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: 07/12/2007 (562156)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
TWC Chapter 26 26.121  
TWC Chapter 26 26.121(a)  
TWC Chapter 26 26.121(a)(1)  
TWC Chapter 26 26.121(a)(2)  
TWC Chapter 26 26.121(a)(3)  
TWC Chapter 26 26.121(b)  
TWC Chapter 26 26.121(c)  
TWC Chapter 26 26.121(d)  
TWC Chapter 26 26.121(e)  
Description: Failure to prevent sanitary sewer overflows (SSOs) from the collection system.

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 MAGNOLIA  
RN101919769

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-1289-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 the City of Magnolia ("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 located at the northeast corner of the intersection of Arnold Branch and Nichols Sawmill Road, approximately 1.5 miles south of the intersection of Farm-to-Market Road 1774 and Farm-to-Market Road 1488, Montgomery 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 July 27, 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 Five Hundred Twenty Dollars (\$8,520) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). The City has paid Six Thousand Eight Hundred Sixteen Dollars (\$6,816) of the administrative penalty and One Thousand Seven Hundred Four Dollars (\$1,704) 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 recognizes that on July 1, 2008, the City submitted an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE § 305.65.
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 City 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 City is alleged to have failed to maintain authorization for the discharge of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on May 22, 2008. Specifically, the City did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11871001 and is continuing to discharge wastewater from the Facility without authorization.

## **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 Magnolia, Docket No. 2008-1289-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 undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TPDES Permit No. 11871001;
  - b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
  - c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:



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

with a copy to:

Water Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the 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 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

2/5/2009  
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

12-9-08  
Date

J.W. Thornton  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Magnolia

Mayor of Magnolia  
\_\_\_\_\_  
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.

