

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0598-MWD-E **TCEQ ID:** RN103930061 **CASE NO.:** 35707

RESPONDENT NAME: Westphalia Water & Sewer Supply Corporation

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: Westphalia STP, adjacent to the east side of State Highway 320, approximately 1,500 feet south of the intersection of Farm-to-Market Road 431 and State Highway 320 near the community of Westphalia, Falls County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 2, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Pat Rabroker, President, Westphalia Water & Sewer Supply Corporation, 734 State Highway 320, Lott, Texas 76656-3541 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: March 20, 2008</p> <p>Date of NOV/NOE Relating to this Case: April 4, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the daily average concentration of 30 milligrams per liter ("mg/L") and the daily average loading limit of five pounds per day ("lbs/day") for biochemical oxygen demand ("BOD"). Specifically, the daily average concentration of BOD was 45 mg/L in November 2007 and 60 mg/L in December 2007 and the daily average loading was 9.51 lbs/day in December 2007 [30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 14382001, Effluent Limitations and Monitoring Requirements No. 1, and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$7,245</p> <p>Total Deferred: \$1,449 <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: \$5,796</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 60 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. 14382001, 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): WQ0014382001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	7-Apr-2008	Screening	10-Apr-2008	EPA Due	
	PCW	5-May-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Westphalia Water & Sewer Supply Corporation
Reg. Ent. Ref. No.	RN103930061
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35707	No. of Violations	2
Docket No.	2008-0598-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Trina Grieco
Multi-Media		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes

Penalty enhancement due to 18 NOVs issued for same or similar violations (which includes 17 self-reported effluent violations), one dissimilar NOV, and one agreed order containing a denial of liability.

Culpability

Enhancement

Subtotal 4

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

Reduction

Subtotal 5

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

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts	<input type="text" value="\$101"/>	0% Enhancement*	Subtotal 6 <input type="text" value="\$0"/>
Approx. Cost of Compliance	<input type="text" value="\$2,000"/>	*Capped at the Total EB \$ Amount	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

A reduction in penalty is recommended to prevent double-enhancement of the penalty amount for same violations that were not self-reported.

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

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 10-Apr-2008

Docket No. 2008-0598-MWD-E

PCW

Respondent Westphalia Water & Sewer Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 35707

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN103930061

Media [Statute] Water Quality

Enf. Coordinator Trina Grieco

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)	18	90%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of 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%
Please Enter Yes or No			
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) 112%

>> 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

Penalty enhancement due to 18 NOVs issued for same or similar violations (which includes 17 self-reported effluent violations), one dissimilar NOV, and one agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 112%

Screening Date 10-Apr-2008	Docket No. 2008-0598-MWD-E	PCW												
Respondent Westphalia Water & Sewer Supply Corporation		<i>Policy Revision 2 (September 2002)</i>												
Case ID No. 35707		<i>PCW Revision February 29, 2008</i>												
Reg. Ent. Reference No. RN103930061														
Media [Statute] Water Quality														
Enf. Coordinator Trina Grieco														
Violation Number <input type="text" value="1"/>														
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 14382001, Effluent Limitations and Monitoring Requirements No. 1 and Tex. Water Code § 26.121(a)													
Violation Description	Failed to comply with the daily average concentration of 30 milligrams per liter ("mg/L") for biochemical oxygen demand ("BOD"). Specifically, the daily average concentration of BOD was 45 mg/L in November 2007.													
	Base Penalty	<input type="text" value="\$10,000"/>												
>> Environmental, Property and Human Health Matrix														
	Harm													
OR	Release	Major Moderate Minor												
	Actual	<input type="text"/> <input type="text"/> <input checked="" type="text" value="x"/>												
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>												
	Percent	<input type="text" value="10%"/>												
>> Programmatic Matrix														
	Falsification	Major Moderate Minor												
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/>												
	Percent	<input type="text" value="0%"/>												
Matrix Notes	A simplified model was used to evaluate the values for BOD to determine whether the discharged amounts of pollutants exceeded levels protective of human health and the environment. As a result of the exceedances, human health and the environment have been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors.													
	Adjustment	<input type="text" value="\$9,000"/>												
		<input type="text" value="\$1,000"/>												
Violation Events														
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="30"/> Number of violation days												
<i>mark only one with an x</i>	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input checked="" type="text" value="x"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input checked="" type="text" value="x"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input checked="" type="text" value="x"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
	One quarterly event is recommended.													
Economic Benefit (EB) for this violation		Statutory Limit Test												
Estimated EB Amount	<input type="text" value="\$101"/>	Violation Final Penalty Total <input type="text" value="\$2,070"/>												
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,070"/>													

Economic Benefit Worksheet

Respondent Westphalia Water & Sewer Supply Corporation
Case ID No. 35707
Reg. Ent. Reference No. RN103930061
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	30-Nov-2007	1-Dec-2008	1.0	\$101	n/a	\$101

Notes for DELAYED costs
 Estimated cost to implement procedures designed to ensure that discharges occur over a period of time that allows for BOD levels to be within permitted limits. Date required is the end of the month during which the exceedance occurred. Final date is the date corrective actions are projected to be completed.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$2,000	TOTAL	\$101
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Screening Date 10-Apr-2008	Docket No. 2008-0598-MWD-E	PCW
Respondent Westphalia Water & Sewer Supply Corporation		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 35707		<small>PCW Revision February 29, 2008</small>
Reg. Ent. Reference No. RN103930061		
Media [Statute] Water Quality		
Enf. Coordinator Trina Grieco		
Violation Number	2	
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1), TPDES Permit No. 14382001, Effluent Limitations and Monitoring Requirements No. 1 and Tex. Water Code § 26.121(a)	
Violation Description	Failed to comply with the daily average concentration of 30 mg/L and the daily average loading limit of five pounds per day ("lbs/day") for BOD. Specifically, the daily average concentration of BOD was 60 mg/L and the daily average loading was 9.51 lbs/day in December 2007.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	x				
	Potential				Percent	25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor		
					Percent	0%

Matrix Notes
 A simplified model was used to evaluate the values for BOD to determine whether the discharged amounts of pollutants exceeded levels protective of human health and the environment. As a result of the exceedances, human health and the environment have been exposed to a significant amount of pollutants which did not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$2,500

One monthly event is recommended.

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Westphalia Water & Sewer Supply Corporation
Case ID No. 35707
Reg. Ent. Reference No. RN103930061
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit for this violation has been included in Violation 1.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN602704074 Westphalia Water & Sewer Supply Corporation Classification: AVERAGE Rating: 2.40

Regulated Entity: RN103930061 WESTPHALIA STP Classification: AVERAGE Site Rating: 2.40

ID Number(s): WASTEWATER PERMIT WQ0014382001
WASTEWATER PERMIT TPDES0125342
WASTEWATER PERMIT TX0125342

Location: Adjacent to the east side of State Highway 320, Rating Date: 9/1/2007 Repeat Violator: NO
approximately 1,500 feet south of the intersection of
Farm-to-Market Road 431 and State Highway 320 near the community of Westphalia

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: April 10, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 10, 2003 to April 10, 2008

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

Name: Trina Grieco Phone: (210) 403-4006

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: 11/24/2005

ADMINORDER 2005-0496-MWD-E

Classification: Moderate

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

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Minor

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

Rqmt Prov: Self-reporting Requirements PERMIT

Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

- 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	06/11/2003	(329258)
2	06/24/2003	(329259)
3	07/09/2003	(329260)
4	08/06/2003	(329261)
5	09/10/2003	(329262)
6	10/13/2003	(329263)
7	11/10/2003	(329264)
8	12/09/2003	(329265)
9	01/05/2004	(329266)
10	02/10/2004	(329255)
11	03/08/2004	(329256)
12	04/07/2004	(329257)
13	05/11/2004	(368229)
14	06/09/2004	(368230)
15	07/13/2004	(368231)
16	09/09/2004	(368233)
17	09/13/2004	(368232)
18	10/14/2004	(368234)

19 11/08/2004 (390813)
 20 01/11/2005 (390814)
 21 01/11/2005 (390815)
 22 02/09/2005 (390811)
 23 02/10/2005 (348449)
 24 03/09/2005 (390812)
 25 04/06/2005 (350457)
 26 04/08/2005 (448172)
 27 05/10/2005 (448173)
 28 06/13/2005 (448174)
 29 07/06/2005 (448175)
 30 08/30/2005 (448176)
 31 09/12/2005 (448177)
 32 10/06/2005 (493774)
 33 11/09/2005 (493775)
 34 12/06/2005 (493776)
 35 01/10/2006 (493777)
 36 02/08/2006 (493772)
 37 03/07/2006 (493773)
 38 04/10/2006 (506958)
 39 05/10/2006 (506959)
 40 05/24/2006 (454940)
 41 06/05/2006 (506960)
 42 07/08/2006 (529099)
 43 08/07/2006 (529100)
 44 09/05/2006 (529101)
 45 10/13/2006 (633462)
 46 11/10/2006 (633464)
 47 01/11/2007 (633468)
 48 01/18/2007 (633466)
 49 02/18/2007 (633454)
 50 03/18/2007 (633455)
 51 04/12/2007 (633456)
 52 05/06/2007 (633457)
 53 06/18/2007 (633458)
 54 07/19/2007 (633459)
 55 08/18/2007 (633460)
 56 09/05/2007 (633461)
 57 10/08/2007 (633463)
 58 11/19/2007 (633465)
 59 12/15/2007 (633467)
 60 01/09/2008 (567237)
 61 01/19/2008 (633469)
 62 04/04/2008 (639813)

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

Date: 04/30/2003 (329258)
 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: 05/31/2003 (329259)
 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: 01/31/2004 (329255)
 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 (329257)
 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 (368229)
 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:	05/31/2004	(368230)		
Self Report?	YES		Classificatio	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	(368231)		
Self Report?	YES		Classificatio	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	(368233)		
Self Report?	YES		Classificatio	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	(368234)		
Self Report?	YES		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	10/31/2004	(390813)		
Self Report?	YES		Classificatio	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:	11/30/2004	(390814)		
Self Report?	YES		Classificatio	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:	03/31/2005	(448172)		
Self Report?	YES		Classificatio	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:	04/08/2005	(350457)		
Self Report?	NO		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to discharge effluent in compliance with permitted effluent limitations.			
Date:	05/31/2005	(448174)		
Self Report?	YES		Classificatio	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	(506959)		
Self Report?	YES		Classificatio	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	05/31/2006	(506960)		
Self Report?	YES		Classificatio	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:	11/30/2007	(633467)		
Self Report?	YES		Classificatio	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	(633469)		
Self Report?	YES		Classificatio	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:	01/10/2008	(567237)		
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 317 317.7(e)			
Description:	Failure by the permittee to maintain proper safety notification.			
Self Report?	NO		Classificatio	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)			

Rqmt Prov: PERMIT Operational Requirements, Pg. 9 No. 1
Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

- 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
WESTPHALIA WATER & SEWER
SUPPLY CORPORATION
RN103930061**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-0598-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 Westphalia Water & Sewer Supply Corporation ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility adjacent to the east side of State Highway 320, approximately 1,500 feet south of the intersection of Farm-to-Market Road 431 and State Highway 320 near the community of Westphalia, Falls County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 9, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seven Two Hundred Forty-Five Dollars (\$7,245) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand Seven Hundred Ninety-Six Dollars (\$5,796) of the administrative penalty and One Thousand Four Hundred Forty-Nine Dollars (\$1,449) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
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 Respondent is alleged to have failed to comply with the daily average concentration of 30 milligrams per liter ("mg/L") and the daily average loading limit of five pounds per day ("lbs/day") for biochemical oxygen demand ("BOD"), in violation of 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 14382001, Effluent Limitations and Monitoring Requirements No. 1 and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on March 20, 2008. Specifically, the daily average concentration of BOD was 45 mg/L in November 2007 and 60 mg/L in December 2007 and the daily average loading was 9.51 lbs/day in December 2007.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Westphalia Water & Sewer Supply Corporation, Docket No. 2008-0598-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall, within 180 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. 14382001, 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 include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Westphalia Water & Sewer Supply Corporation
DOCKET NO. 2008-0598-MWD-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdin
For the Executive Director

2/16/2009
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.

Pat Babroker
Signature

11-25-08
Date

Pat Babroker
Name (Printed or typed)
Authorized Representative of
Westphalia Water & Sewer Supply Corporation

President
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.

